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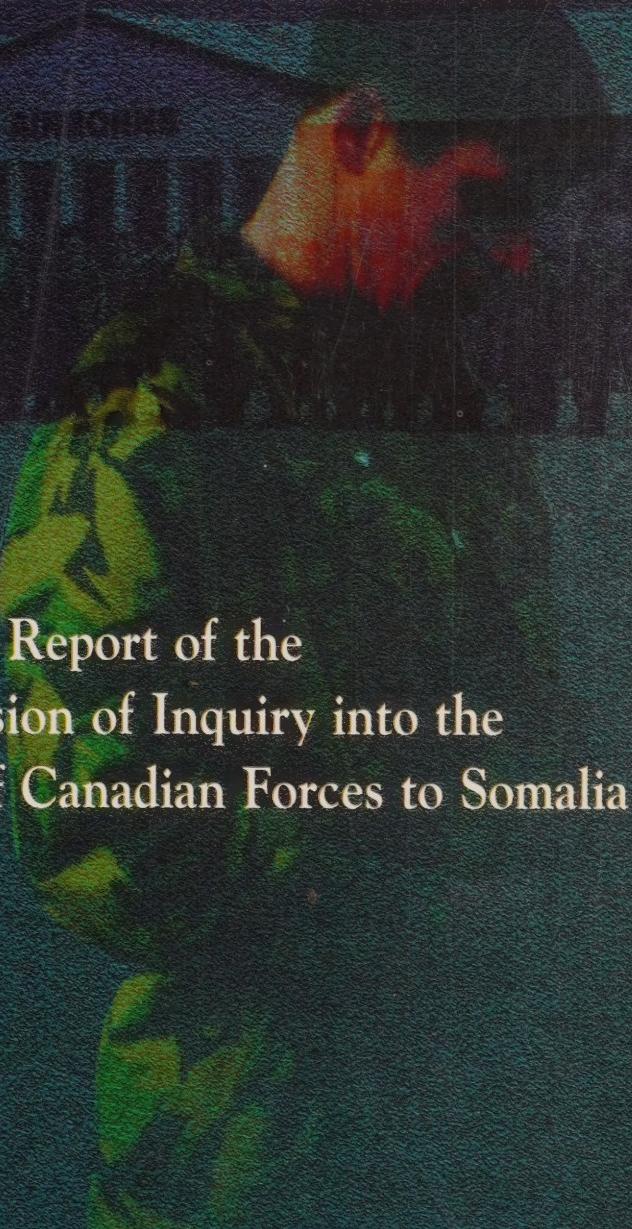


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DISHONoured LEGACY

The Lessons of the Somalia Affair



Report of the
Commission of Inquiry into the
Deployment of Canadian Forces to Somalia

Volume 5

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© Minister of Public Works and Government Services Canada 1997

Available in Canada through your local bookseller
or by mail from Canadian Government Publishing
Ottawa, Canada, K1A 5S9

Catalogue No. CP32-65/1997-5E
ISBN 0-660-17072-8

Printed and bound in Canada

Published also in French under the title:
Un héritage déshonoré : Les leçons de l'affaire somalienne





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NOTE TO READERS

Military Ranks and Titles

In recounting events and reporting on testimony received, this report refers to many members of the Canadian Forces by name, rank and, sometimes, title or position held. Generally, we have used the rank and title in place at the time of the Somalia deployment or at the time an individual testified before this Commission of Inquiry, as appropriate. Thus, for example, the ranks mentioned in text recounting the events of 1992–93 are those held by individuals just before and during the deployment to Somalia, while ranks mentioned in endnotes are those held by individuals at the time of their testimony before the Inquiry.

Since then, many of these individuals will have changed rank or retired or left the Canadian Forces for other reasons. We have made every effort to check the accuracy of ranks and titles, but we recognize the possibility of inadvertent errors, and we apologize to the individuals involved for any inaccuracies that might remain.

Source Material

This report is documented in endnotes presented at the conclusion of each chapter. Among the sources referred to, readers will find mention of testimony given at the Inquiry's policy and evidentiary hearings; documents filed with the Inquiry by government departments as a result of orders for the production of documents; briefs and submissions to the Inquiry; research studies conducted under the Inquiry's commissioned research program; and documents issued by the Inquiry over the course of its work.

Testimony: Testimony before the Commission of Inquiry is cited by reference to transcripts of the Inquiry's policy and evidentiary hearings, which are contained in 193 volumes and will also be preserved on CD-ROM after the Inquiry completes its work. For example: Testimony of LCol Nordick, Transcripts vol. 2, pp. 269–270. Evidence given at the policy hearings is denoted by the letter 'P'. For example: Testimony of MGen Dallaire, Policy hearings transcripts vol. 3P, p. 477P.

Transcripts of testimony are available in the language in which testimony was given; in some cases, therefore, testimony quoted in the report has been translated from the language in which it was given.

Documents and Exhibits: Quotations from some documents and other material (charts, maps) filed with the Inquiry are cited with a document book number and a tab number or an exhibit number. These refer to binders of documents assembled for Commissioners' use at the Inquiry's hearings. See Volume 5, Chapter 40 for a description of how we managed and catalogued the tens of thousands of documents we received in evidence.

Some of the references contain DND (Department of National Defence) identification numbers in lieu of or in addition to page numbers. These were numbers assigned at DND and stamped on each page as documents were being scanned for transmission to the Inquiry in electronic format. Many other references are to DND publications, manuals, policies and guidelines. Also quoted extensively are the *National Defence Act* (NDA), Canadian Forces Organization Orders (CFOO), Canadian Forces Administrative Orders (CFAO), and the *Queen's Regulations and Orders for the Canadian Forces* (which we refer to as the *Queen's Regulations and Orders*, or QR&O). Our general practice was to provide the full name of documents on first mention in the notes to a chapter, with shortened titles or abbreviations after that.

Research Studies: The Commission of Inquiry commissioned 10 research studies, which were published at various points during the life of the Inquiry. Endnotes citing studies not yet published during final preparation of this report may contain references to or quotations from unedited manuscripts.

Published research and the Inquiry's report will be available in Canada through local booksellers and by mail from Canadian Government Publishing, Ottawa, Ontario, K1A 0S9. All other material pertaining to the Inquiry's work will be housed in the National Archives of Canada at the conclusion of our work.

Acronyms and Abbreviations

This report contains many acronyms and abbreviations for government departments and programs and Canadian Forces elements, systems, equipment, and other terms. Generally, these names and terms are spelled out in full with their abbreviation or acronym at their first occurrence in each chapter; the abbreviation or acronym is used after that. For ranks and titles, we adopted the abbreviations in use in the Canadian Forces and at the Department of National Defence. A list of the acronyms and abbreviations used most often, including abbreviations for military ranks, is presented in Appendix 7, at the end of this volume.



THE MARCH 4TH INCIDENT

The shooting on the night of March 4, 1993 resulted in the death of one Somali civilian, Mr. Ahmed Afraraho Aruush, and the wounding of another, Mr. Abdi Hunde Bei Sabrie. For several reasons, this significant incident was a turning point in the deployment of Canadian Forces to Somalia. It was, among other things, the culmination of a dubious interpretation of the Rules of Engagement given by the Commanding Officer on January 28, 1993, an interpretation authorizing Canadian soldiers to shoot at fleeing thieves or infiltrators under certain circumstances.

The planning and execution of the mission that night by the Reconnaissance Platoon caused serious concerns among some of the other members of the Canadian Airborne Regiment Battle Group. Many suspected that the two Somalis had been deceived, trapped and shot, in violation of the Rules of Engagement. Immediately after the shooting, Maj Armstrong, the medical officer who examined the body of Mr. Aruush, concluded that he had been "dispatched" and alerted the Commanding Officer. In the days following, Maj Jewer, Officer Commanding the medical platoon, and Capt Potvin, the padre, met with the Commanding Officer to express similar concerns.

Authorities at the Department of National Defence in Ottawa immediately expressed concern that the Somalis had been shot in the back while running away and that excessive force might have been used.

Notwithstanding all these concerns, the entire incident was the subject of a cursory summary investigation by the Commanding Officer, who designated a captain in his chain of command to report on the incident. In other words, the Commanding Officer investigated the operation of his own unit acting pursuant to his instructions and following his interpretation of the Rules of Engagement. In short, the Commanding Officer investigated his own operational actions and decisions.

The Commanding Officer's report concluded that the shooting was within the Rules of Engagement, absolved the Reconnaissance Platoon of any criminal responsibility, and praised its work. This may have led other CARBG members to believe that all such incidents would be investigated in the same spirit and resolved at the level of the unit. In January and February there had been several similar shootings at night, at fleeing Somalis. There had also been instances of improper handling of prisoners, with trophy-like pictures being taken. All these incidents, up to and including the shootings on March 4th, had gone unpunished, and in this regard they may have paved the way for the brutal torture and killing of a Somali teenager being detained in the Canadian compound on March 16th.

In assessing this incident, we first provide background to the incident and relate the facts and circumstances surrounding the shootings on the night of March 4, 1993. Then we review the disputed facts and rule on these facts. Finally, we state our findings and conclusions on the incident and the allegations of subsequent cover-up.

BACKGROUND TO THE INCIDENT

By March 1993, thievery had become a constant, growing annoyance for the Canadian troops at Belet Huen. The night of March 3rd had been particularly active around the Engineers compound, where items of interest to the local population were stored. A 200-pound pump used to refuel the helicopters had disappeared and was presumed stolen. The Officer Commanding the Engineers Squadron, Capt Mansfield, went to see the Commanding Officer the next morning and, citing a manpower shortage, asked for assistance in providing security for the Engineers compound.

At the morning orders group of March 4th, the CO, LCol Mathieu, assigned Capt Rainville and the Reconnaissance Platoon (known as Recce Platoon) to provide additional security for the Engineers compound. No specific instructions, guidance or parameters for the mission were given to Capt Rainville, although the CO knew that Capt Rainville had shown a serious lack of judgement in conducting unsupervised operations in Canada the previous year.¹ Three incidents in particular were of concern.

On February 7, 1992, Capt Rainville simulated a night-time terrorist attack on La Citadelle in Quebec to test its security. He and his patrol, disguised as terrorists, wearing masks and armed with civilian weapons, stormed La Citadelle and captured the two sentries in charge of the weapons and ammunition depot. Capt Rainville severely mishandled and roughed them up in an attempt to compel them to open the weapons store. One of the sentries eventually escaped and alerted the Quebec Police Force. The police anti-terrorist

team arrived on the scene just a few minutes after Capt Rainville and his team had left.² Only through luck was bloodshed avoided. After the incident BGen Dallaire, the commanding general of the Royal 22^e Régiment, sent a letter to BGen Beno concerning the serious lack of judgement shown in this instance, directing that it be put in Capt Rainville's file.³

On May 15, 1992, during a training exercise at CFB Gagetown involving the taking of 'prisoners', Capt Rainville struck several 'captured' officers and soldiers, including most notably Capt Sandra Perron, ostensibly to simulate the treatment of POWs.⁴ Capt Rainville also manhandled one of his own men to 'make him talk'. Capt Rainville was given only a verbal warning, which was to remain on his file for six months.⁵

Shortly before the Somalia deployment, a photograph of Capt Rainville appeared in a Montreal newspaper, showing him with knives strapped around his belt Rambo-style and claiming that he was trained in kidnapping and assassination and could kill a man in three seconds.⁶ Capt Rainville maintains to this day that he was not responsible for the publication of the photograph.⁷

Although Capt Rainville received no specific instructions before the March 4th mission, LCol Mathieu had instructed his troops at a January orders group that they could shoot at thieves under certain circumstances. This had caused tremendous confusion. Some understood the CO's instructions as an authorization to shoot at Somalis with intent to kill if they touched the wire surrounding the Canadian installations. Others understood that the Somalis had to enter the perimeter of the compound before deadly force could be used. Still others thought the instructions were to shoot at thieves only if they stole 'Canadian kit', but there was no consensus about what this meant. For some, it meant any piece of Canadian equipment, including jerrycans of water or fuel. For others, it had to be a piece of military equipment, but this would also have included jerrycans of fuel. There was also confusion about whether intruders had to be armed before deadly force could be used. Further, there was confusion about shooting at anyone fleeing the compound. While some decided they would not shoot at a thief who was fleeing, they all understood they could use deadly force against someone, armed or not, who fled after stealing Canadian equipment.

Many of the officers commanding (Capt Mansfield, Officer Commanding the Field Squadron of Engineers,⁸ Maj Pommel, Officer Commanding 1 Commando,⁹ Maj Seward, Officer Commanding 2 Commando, Maj Magee, Officer Commanding 3 Commando, and Maj Kampman, Officer Commanding the Royal Canadian Dragoons Squadron, for example)¹⁰ thought that the order or instructions given by the CO to use deadly force against thieves was illegal and refused to pass it on to their respective platoon commanders and troops. Eventually, the CO's instructions were amended and the troops were told to shoot "between the skirt and the flip-flops" — that is, at the legs. This was

generally accepted as being less extreme than the previous order. These directives had at least the tacit approval of Col Labb  , who was aware of them, and they were not rescinded until March 8th, four days after the incident under discussion here.

As for the environment in which the incident occurred, frustration among the men was at its peak for various reasons. A U.S. soldier who had been a close friend of some of the Canadians, Sgt Deeks, had died on March 3rd near Matabaan, some 120 kilometres away, when his jeep exploded a land mine.¹¹ Repeated thievery had upset the soldiers, who felt their privacy was invaded by the same persons they were trying to help.¹² The soldiers apparently expected gratitude from the local population, but instead received what they regarded as hostility.¹³ The lack of adequate cultural awareness and training of the Canadian troops made it difficult for them to understand and appreciate the behaviour of the Somalis. In addition, they were living on hard rations in difficult conditions and felt that their original mission to pacify the Belet Huen Humanitarian Relief Sector had been accomplished; they thought they should be going home, but no redeployment date had been set. Morale was low, and boredom was exacting a toll and fuelling frustration. All of this was reflected in the over-aggressiveness of some units, such as 2 Commando, despite the fact that its Officer Commanding, Maj Seward, had received a reproof in January 1993 for allowing his commando to act aggressively toward the Somali population.¹⁴ Training in the Rules of Engagement and in cultural awareness might have eased the tension and frustration, reminding the soldiers of the need for restraint in dealing with local populations, but such training was not made available. Instead, the rules were relaxed.

It was in this context of confusion about the Rules of Engagement, low morale, unresolved aggressiveness and untamed frustration that the Recce Platoon was loosely tasked with providing security for the Engineers compound. This was a poor leadership decision that would have fatal consequences.

THE FACTS AND THE CONTESTED FACTS

The uncontested facts are as follows. On the night of March 4, 1993, the Reconnaissance Platoon, under the command of Capt Rainville, was assigned the task of providing additional security for the Engineers compound. Capt Rainville divided the patrol into three detachments. Detachment 69, consisting of himself and his sniper, Cpl Klick, took up a position in the back of a truck inside the compound. Detachment 63, consisting of Sgt Plante, Cpl Favasoli, and Cpl King, was located on the west side of the Engineers compound. Detachment 64A consisted of MCpl Countway, Cpl Roch Leclerc and Cpl Smetaniuk and was located off the south-east

corner of the Engineers compound. The detachments had overlapping arcs of observation and fire, which were delineated by infra-red chemical lights (glow sticks visible through night vision equipment but not to the naked eye) to avoid any risk of shooting at each other.

About 10 minutes before 8:00 p.m., two Somali men were observed walking along the east side of the perimeter of the Engineers compound. The observer was Cpl Lalancette, who was stationed as a sentry in 1 Commando's watch tower. The two men approached the south-east corner of the perimeter, where the observation was picked up by Detachment 64A, who watched as the men made their way along the southern edge of the wire before pausing at the south-west corner. Detachment 69 picked up the surveillance at the mid-point of the wire, and Detachment 63 began their observation when the Somalis paused at the south-west corner.

As the Somalis began to move from this point, there is very little agreement about the sequence and timing of events, apart from the fact that they were challenged or scared off and fled from the Recce patrol. As they fled, the Somalis were shot at from behind by Detachment 63, with one being wounded and the other continuing to flee. Once the wounded man had been subdued and restrained, the pursuit of the second man continued until he passed into the area of responsibility of Detachment 64A. The fleeing man was challenged and then subsequently fatally shot by Detachment 64A at about 14 minutes past 8 p.m.

Much of the testimony before us concerning the incident was contested and contradictory. Even participants in the event rarely agreed on all the crucial elements. The testimony concerning these contested facts is therefore of pivotal importance in assessing the incident as a whole. We must determine, then, which view of events will guide our findings concerning the March 4th incident. We do this by examining each part of the incident in turn and identifying the areas of crucial importance for assessing the functioning of the chain of command and the issue of leadership in relation to the incident.

Recce Platoon's Mission

There were significant discrepancies between the assistance requested by Capt Mansfield of the Engineers and the mission carried out by Capt Rainville and the Recce Platoon. Capt Mansfield asked for assistance to increase security at the Engineers compound. The Recce Platoon could have accomplished this goal in many ways, none of which involve capturing intruders, yet this is the task Capt Rainville assigned his men that night. What needs to be determined, then, is how Capt Rainville redefined the mission, what authorization he had to do this, and who he informed of the change. We also assess the effectiveness of the measures put in place by Capt Rainville.

We proceed in the following manner:

1. Exactly what was the mission of the Recce patrol on the night of March 4th as understood by the Engineers and as assigned by LCol Mathieu? How did this compare to the orders Capt Rainville gave to his men? Whom did he inform of his plan for the mission, and what supervision was exercised over Capt Rainville?
2. Then we examine the means by which Capt Rainville went about the task from two perspectives: Where was the focus of the deployment that night? How effective was the division of responsibilities between the Recce patrol and the Quick Reaction Force of the Engineers?
3. What alternative measures for augmenting the security of the Engineers compound were available to Capt Rainville, and why did he not employ them?

Nature of the Mission

According to the Engineers, and as the testimony of Capt Mansfield makes clear, the Recce Platoon was to provide additional security for the Engineers compound, not to capture “saboteurs” or infiltrators as some of the members of Recce Platoon maintain. Capt Mansfield, Officer Commanding the Field Squadron of Engineers, testified that Recce Platoon’s presence in the Engineers compound was requested to deal with the problem of theft, which was beyond the capacity of the Engineers to control.¹⁵ Capt Kyle, the Operations Officer for the CARBG, stated that the problem of securing the perimeter of the Engineers compound against thieves was a topic of discussion at the daily Headquarters compound orders group.¹⁶ Capt Rainville volunteered his Recce Platoon to provide additional security, as the platoon’s duties at the time consisted only of maintaining the Pegasus Observation Post near the camp. Thus it was available for security duty, although the Recce Platoon soldiers had no special expertise in this area.¹⁷

The task officially assigned by LCol Mathieu to Capt Rainville was to provide additional security for the Engineers compound, which Capt Rainville understood included the adjacent Helicopter compound.¹⁸ Whether the Helicopter compound was included in the task is somewhat unclear. Capt Mansfield testified that he was never assigned responsibility for providing security for the Helicopter compound by LCol Mathieu or Capt Kyle, and this did not change after the loss of the fuel pump.¹⁹ Capt Kyle assumed that the Helicopter compound was included in the Engineers compound and so did not think it was necessary to mention it.²⁰ Sgt Groves, who was in charge of security for the Engineers compound, stated that his men did not have official responsibility for security in this area.²¹ WO Marsh had the same view of this issue as Sgt Groves and Capt Mansfield — the Engineers had informal responsibility

for security of the Helicopter compound, but this was technically not part of their compound and was not the area of primary concern for them, and they did not have someone specifically assigned to patrol in that area.²²

When Capt Mansfield requested assistance with the security of his compound, then, he was not thinking primarily in terms of the Helicopter compound; he was concerned with the Engineers compound where the nightly infiltrations were taking place. However, the mission statement Capt Rainville passed along to his men was that they were to apprehend anyone trying to infiltrate the Engineers or the Helicopter compound. Capt Rainville stated in testimony that he was simply refining the order he was given.²³

There was no oversight of Capt Rainville with regard to his mission. He was left to determine on his own how he would accomplish his task. Capt Mansfield stated that once Capt Rainville had been given the task, he was not going to micro-manage him. Capt Mansfield saw Capt Rainville as the expert in these matters and was not about to tell him how to do his job, any more than he would expect Capt Rainville to tell him how to build a bridge.²⁴ This hands-off approach seems to have prevailed on the part of LCol Mathieu and Capt Kyle as well.

Capt Rainville indicated that he reported to Capt Kyle before proceeding with his task.²⁵ Capt Kyle's view was that it was up to Capt Rainville to decide how best to employ his soldiers and that reporting back to Capt Kyle that the necessary co-ordination had been done with other units and that Recce Platoon was ready to perform its assigned task was routine; it did not have to involve exhaustive detail.²⁶ LCol Mathieu had essentially the same view of this process; once he had given the task to Capt Rainville, he trusted him to carry it out and did not feel the need to keep close watch over his activities.²⁷ However, LCol Mathieu did say that he thought Capt Rainville should have reported back to Capt Kyle with the details of his plan; if Capt Kyle had any concerns he could then have reported them to LCol Mathieu.²⁸

It is clear that a full report of the mission plan and the method of carrying it out was not given by Capt Rainville to either Capt Kyle or LCol Mathieu, and in our view these details should have been provided. Had this been done, the mission, in all likelihood, would not have been carried out in the manner that Capt Rainville directed, as according to LCol Mathieu, the role of the CARBG was not to take prisoners.²⁹

The mission, then, was technically a standing patrol to augment the security of the Engineers compound, but Capt Rainville determined this would be accomplished by apprehending infiltrators.³⁰ The distinction between types of infiltrators would be drawn by Capt Rainville.³¹ There was considerable testimony to the effect that Capt Rainville's typical orders groups were extremely detailed, to the point of being tedious for his men.³² This makes the complete absence of any instruction about how infiltrators were to be

captured quite puzzling. The members of the patrol could provide no evidence that they were instructed in how to effect capture of a thief or a saboteur;³³ nor was there any discussion of how the Rules of Engagement applied to saboteurs.³⁴ This is simply not consistent with Capt Rainville's normal *modus operandi*.

Capt Rainville stated that he made the distinction between thieves and saboteurs during the orders group.³⁵ The details do not seem to have been clearly understood by the soldiers, however, other than the fact that they had to fire a warning shot before firing an aimed shot.³⁶

Cpl Klick and Cpl King both maintained that the purpose of the mission as explained to them at the orders group was to capture saboteurs,³⁷ but neither could explain why this was not reflected in their earliest statements concerning the mission. Cpl Favasoli has no memory of the use of the terms sabotage or saboteur at any time during the orders group,³⁸ and Sgt Plante recalls no distinction being made between saboteurs and thieves.³⁹ Cpl Favasoli remembers that he did not hear sabotage or saboteur in connection with the mission for a particular reason: several weeks after the incident he received a newspaper clipping from home in which Col Labb   was quoted as mentioning sabotage, and Cpl Favasoli had not heard this before.⁴⁰ Cpl Favasoli does recall, though, that Capt Rainville seemed clear about the fact that they were to capture any infiltrators;⁴¹ this was echoed by Sgt Plante⁴² and the other members of the patrol.

Patrol members all maintain that they were operating under the understanding that they were there to capture someone. However, they simply were not clear how this was to be accomplished, and in fact, nothing in the Rules of Engagement indicates how to effect such a capture.⁴³ Cpl King maintains that his orders were to capture a Somali in condition to be interrogated, but he has no explanation for why the person they did capture was not interrogated;⁴⁴ nor does Sgt Plante, who stated that they intended to interrogate prisoners to gain intelligence concerning sabotage.⁴⁵ As for the mechanics of carrying out the assignment as it was understood, it was generally accepted among the soldiers that it was impossible to run down a fleeing Somali,⁴⁶ yet there was no discussion or plan for effecting a capture.⁴⁷ It seems clear that the only possible way to apprehend a Somali was by use of non-lethal force,⁴⁸ but there is no provision in the Rules of Engagement for shooting to wound.⁴⁹ In addition, Canadian soldiers are trained to shoot for the centre of visible mass, which further complicates the issue of how the members of the patrol were to accomplish their task of capturing Somali infiltrators.

Capt Rainville testified that LCol Mathieu gave the order that before proceeding to deadly force as part of the graduated response, the men were to shoot to wound if possible, and this is the instruction he passed along to his men.⁵⁰ This is likely the only way a mission to capture a Somali saboteur

or looter could have been successful.⁵¹ There is no widespread agreement on whether the individuals to be captured would have to be saboteurs, or simply infiltrators; nor is there consensus on whether it was permissible to shoot to wound. Capt Rainville testified that the men had clear and unequivocal authorization from him at the orders group to shoot to wound in order to effect a capture, but only Sgt Plante understood that this was the case.⁵² This may be why Sgt Plante is the only member of the patrol who equipped himself with a 12-gauge shotgun for the night's mission, as this weapon is more suitable for non-lethal firing than the C7 rifle. Capt Rainville maintained that he attempted to acquire more shotguns for his troops but was unable to do so, despite making the request up the chain of command.⁵³ However, this is difficult for us to accept at face value, as Sgt Groves of the Field Squadron of Engineers held range practice with 12-gauge shotguns for the men in his Quick Reaction Force the afternoon of March 4th to make them more familiar with the weapons.⁵⁴ This would appear to have been an oversight in Capt Rainville's planning, one that would have fatal consequences in the shooting by Detachment 64A, discussed in greater detail later in the chapter.

The Focus of the Mission

There was obviously miscommunication about whether the focus of the mission was to be the Engineers compound, the Helicopter compound at the north end, or both. Cpl Favaroli thought that the focus of the mission was the Engineers compound, although they would have been concerned about the Helicopter compound as well.⁵⁵ The deployment of the detachments clearly indicates that the focus of the mission was to the south, however, as the interlocking arcs of observation and fire all converged on the southern portion of the Engineers compound. This is also reflected in the orientation of the detachment positions. Capt Rainville and his sniper were facing to the south from their position inside the compound;⁵⁶ all members of Detachment 63 were facing south, with their focus clearly on the Engineers compound;⁵⁷ and the members of Detachment 64A were in a line facing north-west toward the southern part of the Engineers compound.⁵⁸ (See Annexes D, E and F to this chapter.)

It does not seem to have occurred to anyone that infiltrators might come from the north, and the Helicopter compound was not discussed as a likely target for infiltrators.⁵⁹ Cpl King also conceded that the operation really covered only south-west, south and south-east of the Engineers compound, because otherwise there would have been a risk of shooting each other.⁶⁰ Cpl Klick stated that the most likely avenue of approach to the compound was from the south,⁶¹ but he admitted that if the "saboteurs" had approached from any direction other than the south, the positioning of at least the command post/fire base in the truck inside the compound would have been ineffective for all intents and purposes.⁶²

Capt Rainville's view was that the north end of the Engineers compound and the Helicopter compound were too well-guarded by wire, by the Service Commando surveillance tower, and by the Quick Reaction Force of the Engineers for infiltrators to get in that way, so he oriented his men toward the most likely avenue of approach, which was from the south.⁶³ However, this does not account for the fact that the main highway, just to the north, remained essentially unguarded as an approach to the Helicopter compound.

If Capt Rainville had wanted to make effective use of Cpl Klick's talents as a sniper to counter possible sabotage by an organized military opponent, he would have concealed him somewhere outside the compound to cover the possible avenues of approach independently.⁶⁴ As it was, Cpl Klick's only possible course of action in the event of threatened sabotage would have been to shoot to kill, not to apprehend as Capt Rainville intended. The normal escalation of response under the Rules of Engagement would not have been possible. Because of his positioning and employment in the mission, if Cpl Klick had seen a hostile act, he would have had almost no other option but to use deadly force.⁶⁵ In fact, the chances of the Recce patrol apprehending infiltrators inside the compound without using their weapons was minimal, as no patrol members were placed inside the compound where they would have had a chance of apprehending someone.⁶⁶

The way Capt Rainville deployed the three detachments effectively covered the specific purpose of engaging an infiltrator attempting to penetrate the south end of the Engineers compound.⁶⁷ However, if we accept the stated goal of the mission as being to guard the Helicopter compound against sabotage and to capture infiltrators, the deployment of the Recce patrol is highly suspect.

This point was highlighted by the testimony of Maj Buonamici, the Military Police investigator who subsequently investigated the incident, who stated that the purpose of the mission is revealed by the deployment of the soldiers. In his view there was clearly no indication in the deployment of the Recce Platoon that night that they were concerned at all about sabotage in the Helicopter compound.⁶⁸

The Division of Responsibilities

There are further deficiencies in the deployment of the Recce patrol if we accept that the purpose of the mission was to prevent sabotage or to apprehend infiltrators. The division of responsibilities between the Recce patrol and the Quick Reaction Force (QRF) of the Engineers was totally illogical if we accept the version of events given by patrol members. According to them, the Recce patrol (located in the south part of the compound) would handle sabotage (expected to happen in the north part of the compound) while the QRF (located to the north of the compound) would be called in to deal with

thievery (anticipated to occur to the south where supplies of food and water had been set out as bait).⁶⁹ Would it not have been more logical for the Recce patrol either to locate further north or to switch duties with the QRF? Locating to the north part of the compound would also have offered the opportunity to trap saboteurs effectively against the perimeter wire.⁷⁰

Sgt Groves of the QRF testified that his instructions were not to enter the south part of the compound at all, but to patrol to the north, including keeping the Helicopter compound under observation and looking for thieves.⁷¹ Sgt Groves also testified that he was unaware of any distinction between thieves and saboteurs; he was simply told not to enter the south part of the compound beyond the tent lines because, he understood, the Recce patrol was there to guard against thieves and infiltrators.⁷² Capt Mansfield's testimony accorded with that of Sgt Groves in this regard, in that he never heard about sabotage in connection with March 4th until two weeks after the shootings.⁷³ He testified that the response of the Recce Platoon to the security problem was inappropriate to his needs.⁷⁴ There had never been any attempt at sabotage in his compound, and Capt Mansfield's concern was theft.⁷⁵

Nowhere in the testimony of members of the CARBG who were not part of the Recce Platoon is there evidence of concern about sabotage. There was a significant concern about theft, which Sgt Groves said was almost epidemic.⁷⁶ This view was echoed by many of the non-Recce Platoon witnesses.⁷⁷ Theft was almost invariably petty theft of personal belongings, food and water; there were no instances of weapons, ammunition or communications equipment being stolen from the camp at Belet Huen.⁷⁸

Thieves were caught on a regular basis; as many as 15 had been caught around the end of February and the beginning of March 1993 at the Service Commando compound, before lights were installed.⁷⁹ Sgt Groves indicated that he felt the Canadians were being laughed at for not being able to put a halt to the nightly incursions, but the Engineers had never shot at anyone.⁸⁰ There seemed to be no need to shoot at members of the local population who might be involved in thievery, because they were not dangerous: no Canadian troops had ever been injured by an intruder at the Belet Huen camp. WO Ashman of the Unit Medical Services testified that to his knowledge no Canadian troops at Belet Huen were treated for wounds inflicted by a Somali during the whole deployment.⁸¹ Sgt Groves also testified that he was anxious about the mission being conducted by the Recce Platoon because he felt that someone would be shot that night.⁸² Further, in his testimony Capt Mansfield was visibly distressed when he spoke about the response of the Recce Platoon to the security problem, stating that it was inappropriate and well beyond what the situation called for.⁸³

Possible Alternative Security Measures

There were many possible methods of increasing security at the Engineers compound. Capt Rainville chose to go about the task by attempting to capture infiltrators rather than trying to deter incursions.⁸⁴ However, other security measures could have been adopted that were much less aggressive, but offered a fair chance of reducing or eliminating the problem of theft.

Capt Mansfield testified that the best way to stop incursions would have been deterrence by way of increased defences.⁸⁵ Capt Kyle agreed that more could have been done in the way of deterrence through the use of para-flares, increased wire, and lights.⁸⁶ Capt Mansfield had the capability of installing lights around the compound and erecting a lighting tower to illuminate the southern end of his compound, as well as fashioning a makeshift surveillance platform.⁸⁷ WO Marsh indicated he had offered Capt Rainville four large spotlights that would have lit the entire southern end of the compound, but that Capt Rainville turned them down.⁸⁸ Apparently Capt Rainville wanted to avoid changing the appearance of the compound and inhibiting the use of night-vision goggles, to give him a greater chance of catching intruders.⁸⁹ But if the Recce patrol had really been concerned about preventing sabotage, why decline to erect a light tower or a watch tower in the south end of the Engineers compound?⁹⁰

Other possible security measures considered by Capt Mansfield included bulldozing an area directly outside the wire,⁹¹ increasing the amount of patrolling inside and outside the wire (which was already being done), and firing off para-flares to scare off potential intruders.⁹²

Providing greater illumination in the compound might have interfered with the use of night vision goggles by the Recce Platoon,⁹³ but it is unlikely that potential thieves would have been inclined to approach a brightly lit compound in any event.⁹⁴ This would seem to be borne out by the fact that a day or two after March 4th, the Engineers did erect a light tower and a surveillance tower under Capt Mansfield's orders, and thievery declined almost completely after that.⁹⁵ Although in the minds of some, the shootings on March 4th may have contributed to deterring further looting, we are nonetheless satisfied that installing a light tower and a surveillance tower, along with increased foot patrols and firing off para-flares, would have provided more acceptable and lasting deterrence to infiltrators in the long run.

In our view trying to capture infiltrators was an unnecessarily and excessively aggressive measure. There is no evidence that infiltrators at the Engineers compound posed any great danger. (This point is discussed in greater detail later in the chapter.) There is no indication of weapons ever being stolen from the Engineers,⁹⁶ nor were there ever armed incursions into their compound. No Canadian Forces personnel were ever attacked or injured by intruders at

the Engineers compound.⁹⁷ In our view, nothing can justify the approach taken by the Recce Platoon on the night of March 4th. Potential intruders could simply have been deterred from attempting to enter the Engineers compound; it was completely unnecessary to capture them.

In our view, the mission conducted by the Reconnaissance Platoon on the night of March 4th was a misguided attempt to send a clear, strong message not to attempt to breach the Canadian wire. This was also the goal Capt Hope described in his summary investigation report, and he stated that it had been accomplished by the Recce Platoon.⁹⁸ This conclusion was shared by other soldiers.⁹⁹

The Sabotage Theory

Some members of the Recce Platoon contended that the two men were shot on the night of March 4, 1993 because the mission was to apprehend infiltrators in an effort to prevent sabotage against Canadian installations at Belet Huen. This explanation, in our view, was concocted after the fact to disguise what would otherwise have to have been considered an incident in which Canadian soldiers acted in contravention of the Rules of Engagement by shooting Somalis who were fleeing.

There is simply no objective evidence whatsoever to support the sabotage theory. As we have seen, the assigned task was to provide additional security for the Engineers compound. We have also seen that Capt Rainville reinterpreted the mission as being to capture infiltrators or "saboteurs". However, there are several problems with the sabotage theory, and we discuss them under four headings: the planning of the mission; the conduct of the mission; the treatment of the captured Somali; and the earliest reports dealing with the mission. From an examination of the relevant testimony, it is clear that no saboteurs were apprehended on March 4, 1993; rather, the Recce patrol acted in an overly aggressive manner, exceeding the boundaries of the Rules of Engagement and shooting two Somalis who had already quite clearly ceased any activity that could have been interpreted as hostile and were fleeing the scene.

Mission Planning

If the mission was designed to apprehend saboteurs, presumably that would be reflected in the orders given to the Recce patrol. Yet the members of the patrol were unable to produce any evidence that they were instructed in how to effect capture of a saboteur,¹⁰⁰ nor was there any discussion of how the Rules of Engagement applied to saboteurs.¹⁰¹ Indeed, there was no plan for capturing saboteurs;¹⁰² it was assumed that the soldiers would simply react to the situation on the ground and somehow effect capture.

The pretext provided for the fear of sabotage is not credible. The theft of the fuel pump was the only evidence of sabotage produced, and it is highly questionable. The 200-pound fuel pump had been completely unprotected by fencing or guards, and it was replaced the next day.¹⁰³ Further, there is no evidence that the alleged theft was ever reported or was ever the subject of an investigation. Had the fear of sabotage been genuine in relation to the loss of the fuel pump, the Commanding Officer would have been obliged under CFAO 22-3, Article 7a, to ask the Special Investigations Unit to investigate the matter.¹⁰⁴

A possible explanation for the disappearance of the fuel pump is suggested by Capt Mansfield's action with regard to the light tower which he had brought to the compound from the airfield without authorization from CARBG HQ. According to Maj Buonamici, a former infantry officer and former Formation Provost Marshall, theft from one unit by another unit during multi-unit or multi-national exercises occurs frequently. A possible explanation for what happened to the fuel pump is that it was 'scrounged' or 'liberated' from the CARBG by another unit with refuelling requirements.¹⁰⁵

If sabotage had truly been the intent, the fuel pump could have been destroyed, along with the 80,000 litres of fuel stored without protection adjacent to the pump.¹⁰⁶ In addition, there is no evidence of sabotage of Canadian equipment at any time during the deployment, let alone evidence of such acts by terrorists or other militarily organized hostile forces. In particular, Capt Mansfield had no reports of infiltrators attempting to sabotage any of his equipment.¹⁰⁷

The most likely target of any sabotage that might occur was the Helicopter compound at the north end of the Engineers compound,¹⁰⁸ or (less likely) the ammunition dump at its south end, which contained confiscated unexploded ordinance slated for destruction.¹⁰⁹ Thus, it is logical to suppose that the Recce patrol would be set up in such a way as to offer maximum protection to the north part of the Engineers compound; this would also offer the greatest chance of catching a saboteur. However, the Recce patrol set up to cover the south part of the compound, where boxes of food and jerrycans of water had been placed, supposedly as a means of distinguishing between thieves and saboteurs. But the bait was placed inside a trailer within just 20 to 30 metres of the ammunition dump,¹¹⁰ making it next to impossible to determine which target a supposed saboteur or thief had been attracted to (see Annexes B and C).

The Conduct of the Mission

Accounts of how the mission was conducted are murky. Some elements of what took place could conceivably apply to the scenario offered by the sabotage theory, but other events do not support this. Capt Rainville retained

for himself the authority to distinguish between potential thieves and saboteurs.¹¹¹ However, when Capt Rainville left the truck to approach the intruders he gave Cpl Klick no instructions about whether they were thieves or saboteurs.¹¹² In fact, Cpl Klick admitted that he was never told directly that the two Somalis were saboteurs; he claims to have assumed that based on the fact that Capt Rainville got out of the truck to go after them.¹¹³ Capt Rainville stated that he called Detachment 63 and instructed them to move north to intercept the two Somalis while he approached them from the other side. That way, they would be able to sandwich the Somalis between them.¹¹⁴ However, none of the members of Detachment 63 can recall receiving this order from Capt Rainville.

There are also numerous contradictions and inconsistencies in the testimony concerning the following series of events. When Capt Rainville left the truck, he claims to have left his sniper in place to cover his approach. However, Cpl Klick states clearly that Capt Rainville did not ask Cpl Klick to cover him.¹¹⁵ Capt Rainville also maintains that the two Somalis conducted a "reconnaissance of the helipad compound for about 10 minutes."¹¹⁶ Sgt Plante, who observed them continuously while they were supposedly heading toward the Helicopter compound, did not see this 10-minute reconnaissance;¹¹⁷ nor did Cpl Klick or Cpl Favaroli.¹¹⁸ Cpl Klick's testimony agrees with the account in the log book for that evening — that from the moment the two Somalis started up the south-west side of the compound until the final shots were fired, the total elapsed time was about five minutes.¹¹⁹ This would not have been nearly enough time to carry out a reconnaissance of the Helicopter compound.

The viability of using a sandwich (or pincer) tactic to effect capture of a saboteur or thief was also explored. Presumably, this technique would have offered the greatest likelihood of capturing an intruder.¹²⁰ However, when questioned in detail about this, Cpl King admitted that Detachment 63 was not well positioned to sandwich intruders.¹²¹ Cpl Favaroli also indicated that Detachments 63 and 64A were well positioned to deal with intruders from the south,¹²² but it might have been difficult to effect a sandwich manoeuvre. Sgt Plante, who led Detachment 63, stated that it would not have been possible to sandwich intruders at the Helicopter compound, as no one was on the inside; instead they would have tried to funnel intruders along the wire toward the other detachment.¹²³ If the intruders had fled toward the west, the patrol could have done nothing about it.¹²⁴ It was hoped that the patrol would surprise them in the wire; the intruders would realize they were caught and would give up.¹²⁵ Cpl Roch Leclerc did not envisage a sandwich tactic at all in his description of how an intruder would be captured; the detachments all had separate areas of responsibility that overlapped slightly, but Cpl Leclerc did not speak

of a sandwich or pincer manoeuvre.¹²⁶ In our view, the mission plan never included the capture of a Somali unless the Somali gave up or was wounded and did not die.

Treatment of the Captured Somali

The treatment of the captured Somali is incomprehensible if in fact he was considered a saboteur. Cpl King was told to accompany the wounded man, Mr. Abdi, to the medical compound for treatment and to provide security while there.¹²⁷ Yet, Cpl King states that he was given no special instructions about how to handle the suspected saboteur;¹²⁸ did not turn him over to anyone in particular;¹²⁹ never informed anyone at the hospital that Mr. Abdi was a suspected saboteur;¹³⁰ that an American who spoke Somali came in without identifying himself and interviewed the first suspected Somali saboteur ever captured without any protest or argument from Cpl King;¹³¹ that Cpl King left the suspected saboteur wide awake and unguarded in the medical compound;¹³² and that he was given no instructions to interrogate the prisoner or indications that the prisoner would be interrogated.¹³³ Sgt Plante's recollection of these points dovetails with Cpl King's, as they both accompanied Mr. Abdi to the hospital, and neither took any special precautions with the man they said was a suspected saboteur.¹³⁴ Neither Sgt Plante nor Cpl King had any idea about what happened to the prisoner,¹³⁵ who was released from hospital and never interrogated by Canadian intelligence.¹³⁶

It strains belief to accept that Mr. Abdi would have been treated this way if he had been a suspected saboteur. The behaviour of Sgt Plante and Cpl King rings true only if Mr. Abdi was simply a wounded man — perhaps a suspected thief — brought in for treatment. Further, the fact that no weapons (other than a knife), explosives or breaching devices were found on Mr. Abdi, and that he was wearing a brightly coloured shirt, tends to refute the theory that he was a saboteur.¹³⁷

The Initial After-Action Reports

There is no mention of saboteurs in any of the written statements produced for Capt Hope, who conducted the initial investigation of the incident, and only Cpl Roch Leclerc mentions saboteurs in his May 1993 interview with MWO Bernier of the Military Police. All the others speak of "looters" or "thieves".¹³⁸ The only soldiers who mention sabotage in their statements are MCpl Countway and Cpl Leclerc,¹³⁹ but they do not state that the two men were saboteurs. Also, Cpl King's statement at the general court martial of Capt Rainville mentioned setting up an observation post in the Engineers compound and apprehending thieves; no mention was made of saboteurs.¹⁴⁰

This was consistent with the report made by Col Labbé to NDHQ on March 23rd, which read in part as follows: "The members of reconnaissance platoon involved in the March 4th incident were deployed as part of the normal nightly Canadian Airborne Regiment Battle Group security plan to guard against looters. They were properly briefed and prepared and had reviewed the approved Rules of Engagement."¹⁴¹ At no time was the word saboteur mentioned, and at no time did Capt Hope's report on the incident mention saboteurs, let alone that one had been captured.¹⁴² As Intelligence Officer of the CARBG, Capt Hope would have had a great deal of interest in interrogating a captured saboteur and would definitely have interviewed one.¹⁴³ The fact that he did not is highly significant, indicating that the men were not seen as saboteurs at the time.

It is similarly difficult to believe that Capt Kyle would not remember Capt Rainville reporting to Col Labbé and LCol Mathieu in his after-action debriefing that the two Somalis shot were saboteurs, yet Capt Kyle testified that he remembers Capt Rainville saying they were looters.¹⁴⁴ He also did not indicate in his Significant Incident Report that the Somalis ever breached the wire, but rather that they were trying to break into the Canadian compound.¹⁴⁵ The first instance of the word sabotage appearing in print with reference to the night of March 4th was on March 5th, in LCol Mathieu's response to a series of questions from NDHQ requesting information about the shootings. LCol Mathieu stated that the Somalis were shot because they attempted to gain access to the Helicopter compound, possibly to commit an act of sabotage against the Black Hawk helicopters.¹⁴⁶ Yet LCol Mathieu did not mention sabotage at his morning orders group on March 5th as he might have been expected to do if sabotage had been at issue.¹⁴⁷

Several other points about the sabotage theory are also problematic. The lack of curiosity and apparent nonchalance on the part of the soldiers involved in the incident regarding what their comrades had done is remarkable, given that this was supposedly the first and only mission undertaken while in Somalia to capture saboteurs, and they had actually captured one. Cpl Klick assumed that since shots were fired, the members who fired must have followed the Rules of Engagement, but he claims not to have inquired about any details about the shots.¹⁴⁸ Yet Cpl Klick presumed to speak on behalf of patrol members on occasion, indicating that he was quite interested in knowing their views on the events of March 4th.¹⁴⁹ Cpl King also stated that he asked questions only to satisfy his curiosity about the events of the patrol.¹⁵⁰ He did acquire a fairly detailed picture of events, however, as evidenced by his first written statement to Capt Hope, and he never made any mention of saboteurs.¹⁵¹ These and other inconsistencies in the testimony and the lack of any objective evidence make it impossible to put any credence in the sabotage theory.

If we accept the version of the events presented to Capt Hope — that is, that the mission was to augment security by capturing thieves — then the patrol members' evidence is consistent, and the same understanding of the mission is reflected by Capt Mansfield, Sgt Groves, and Col Labb  . If we accept the version of events presented to us by the members of the patrol, the real purpose of the mission as defined by Capt Rainville was not disclosed up and down the chain of command; the setting out of supplies as bait was not disclosed; the role of the Quick Reaction Force of the Engineers in capturing thieves was not disclosed; the fact that a saboteur was captured was not disclosed, nor was any information gained from an interrogation of him disclosed.¹⁵² If the mission was to capture saboteurs, then the testimonies are inconsistent with each other and with the sabotage theory. In our view, the evidence does not objectively support the sabotage theory, and it is therefore not believable.

The Placing of Bait

There was some discussion before us about the purpose of placing food and water in a trailer at the south end of the Engineers compound. There was also disagreement about who knew about this tactic and who did not. Here we examine the legitimacy of the tactic before determining who knew about it.

Most of the soldiers who were aware of the supplies being put out testified that the supplies were there as a means of distinguishing between simple thieves, who would be interested in the supplies, and saboteurs, who would bypass them in favour of more significant military targets such as the helicopters. This was Capt Rainville's stated purpose for the ploy, which he referred to as a deception plan; it was his own addition to the mission.¹⁵³ The only alternative view came from Sgt Plante, who said the supplies would serve the purpose of attracting a thief already inside the compound to a convenient location to be captured; they were not intended, he said, to entice anyone outside the compound to enter.¹⁵⁴ However, WO Marsh of the Engineers stated that this is exactly the effect they would have had on any Somalis near the compound.¹⁵⁵

Capt Rainville claimed that the supplies in the trailer constituted a "deception plan", common under CF patrol doctrine¹⁵⁶ and allowable under the Rules of Engagement.¹⁵⁷ This plan, he told us, would allow the Recce patrol to distinguish between thieves and saboteurs and would provide a distinction that would guide patrol members' response to the situation.¹⁵⁸ There are several problems with this premise. First, this was an environment in which food had been the cause of riots. Using food to entice hungry people into a potentially dangerous situation¹⁵⁹ would have been questionable in most circumstances and was simply unacceptable here.

Further, the way the supplies were set out did not conform to section 27(C) of the Rules of Engagement concerning the use of military deception. The supplies were not placed so as to protect against attack, nor were they placed in a way that would enhance security — in fact, they had the opposite effect, tempting intruders to enter the compound. Nor did the supplies serve to deny hostile forces the ability to track, locate or target Canadian or Coalition forces.¹⁶⁰ At best, this tactic showed highly questionable judgement. At worst, it was in direct contravention of the Rules of Engagement.

Capt Mansfield was not aware of the “deception plan” at the time,¹⁶¹ but he later saw this as a poor idea that offered little or no deterrent value.¹⁶² Capt Mansfield stated that the effect of putting out the supplies was neutral on potential intruders, because on the many other nights when supplies were not put out, there were still incursions into the Engineers compound.¹⁶³ WO Marsh supervised the placing of the ration boxes and water cans under Capt Rainville’s direction,¹⁶⁴ and although he did not necessarily agree with the tactic, he was not about to tell Capt Rainville how to go about his business.¹⁶⁵

Capt Rainville is not entirely sure whether he informed CARBG HQ about the specifics of this tactic before the mission. He stated that when he reported to the Operations Officer, Capt Kyle, he sketched out the overall layout of the mission plan, including the use of infra-red chemical lights to mark positions and the use of two lay-back detachments outside the wire, but he was not sure whether he mentioned the “deception plan”.¹⁶⁶ Capt Kyle has no memory of hearing about it beforehand,¹⁶⁷ and LCol Mathieu also states he was not informed of this element of Capt Rainville’s plan.¹⁶⁸ This is highly significant, not only for operational purposes, but also because it indicates that this tactic was not cleared with the senior command of the CARBG, breaking the loop of reporting and accountability that should have been intact in the chain of command.

It was only after the shootings, when Capt Rainville debriefed Col Labbé, LCol Mathieu, and Capt Kyle, that Capt Rainville is sure he mentioned the deception plan.¹⁶⁹ He states further that he showed LCol Mathieu the location of the bait the following day when they walked the ground where the shootings had taken place.¹⁷⁰ This is disputed by Col Labbé and LCol Mathieu, who both state they were unaware of the existence of the bait until well after redeployment to Canada.¹⁷¹

Clearly, the unease of the senior command with this tactic is further evidence of its questionable legitimacy. In our view, its only purpose was to entice Somalis into or near the Engineers compound so that the Recce Platoon could engage them. As such, the use of this tactic was deplorable; it cannot be justified militarily, and it undermines the professional values

and attitudes of the Canadian military. The fact that Capt Rainville was allowed to proceed in this manner is further evidence of the lack of adequate command oversight with regard to this incident.

The “Military Approach” of the Intruders

Along with the sabotage theory, the main justification for the way the Recce Platoon reacted was what has been described as the “military approach” of the two Somalis to the Engineers compound and subsequently the Helicopter compound. Based on their interpretation of the actions of the Somalis, the members of the Recce Platoon judged that they were military-trained, if not soldiers or saboteurs; they therefore assumed a high state of alertness. As we demonstrate, however, there was nothing in the behaviour of the Somalis to suggest that they were anything more than thieves exercising caution to avoid detection.¹⁷²

Three characteristics of the incident led the Recce patrol members to perceive what they called a military approach by the two men: a “clover-leaf recce” of the south wire of the Engineers compound; a “bounding overwatch” as they moved outside the wire; and a “leopard crawl” approach to the Helicopter compound. We examine the actions of Mr. Abdi and Mr. Aruush to determine whether they behaved, as contended, in a military fashion.

From the point at which the two Somalis were first spotted by Cpl Lalancette from the 1 Commando tower, he characterized their progress as a normal walk toward the river along the path that paralleled the east side of the Engineers perimeter.¹⁷³ Cpl Lalancette, who was not involved in the Recce Platoon operation or in the shootings, had the two men under constant observation through powerful night vision equipment, a night observation device long range (NODLR). According to Cpl Lalancette’s testimony, at the half-way point of the east side of the Engineers perimeter, the Somalis stopped and sat for up to a minute. They approached the wire and touched it, then sat again for a couple of minutes. Then they continued south. At the south-east corner of the wire, they turned west.¹⁷⁴ Cpl Lalancette asserted firmly that he could see quite well and that there was nothing to obstruct his view.

At the half-way point of the southern edge of the perimeter, according to Cpl Lalancette, the two Somalis sat again for one or two minutes. They touched the wire a second time, then moved on, and he lost sight of them briefly. From his position, he thought they had entered the compound when he spotted them again,¹⁷⁵ but the evidence revealed that they had actually moved around the south-west corner of the perimeter and begun to move north. Throughout Cpl Lalancette’s constant observation of the two Somalis, their behaviour consisted of a normal walk, and their approach had nothing military about it.

This description by an independent observer contrasts sharply with that of the members of the Recce Platoon, particularly Cpl Roch Leclerc, who was later involved in the shooting death of one of the men. According to Cpl Leclerc, when the two Somalis reached the south-east corner of the perimeter they began to walk more cautiously, stopping at various points along the south perimeter to talk to each other and point in various directions inside the compound.¹⁷⁶ It is this manner of approaching the wire, then moving away to discuss what they saw, that patrol members characterized in their testimony as a “clover-leaf recce”.¹⁷⁷ In fact, it could very well have been a simple case of thieves not being sure of how to proceed or where the best place was to enter the compound. Indeed, none of the patrol members used the term clover-leaf in their first statements concerning the incident. Only MCpl Countway and Cpl Smetaniuk referred to a recce in their original statements, and neither used the term clover-leaf.¹⁷⁸

Only when pressed were patrol members willing to admit that the likely cause of the pointing and discussion between the two men was the rations and water visible at the south end of the Engineers compound.¹⁷⁹ The reasoning of patrol members becomes circular and self-serving on this issue as well: it was the fact that the two men approached the compound at night that led patrol members to believe that the Somalis were armed and dangerous; they could not see why the Somalis would approach a military installation if they were not armed.¹⁸⁰

All the members of the patrol now refer to the approach using the clover-leaf term, including Capt Rainville, who testified that he used the term when he reported to LCol Mathieu and Col Labb   the night of the incident. He could not explain, however, why he had not used the term in his statement.¹⁸¹ Capt Rainville wrote in his statement that they “walked along the wire”.¹⁸²

MCpl Countway also referred to the supposed ‘clover-leaf’ in his testimony, although he had said in his May 1993 interview with MWO Bernier of the Military Police that the men were just walking by.¹⁸³ When pressed, MCpl Countway could not state clearly what a thief would do that was different from what he saw as a “clover-leaf recce”.¹⁸⁴ This is significant because, when interviewed by the Military Police, MCpl Countway characterized the mission as having to do with stopping “burglars”; it was only after the general court martial of Capt Rainville that MCpl Countway began to use the terms clover-leaf and saboteurs.¹⁸⁵

We do not believe that the two Somalis conducted a clover-leaf recce in the military sense that some members of the patrol now claim. The behaviour of Mr. Abdi and Mr. Aruush was, in our view, consistent with, at worst, the behaviour of thieves and did not indicate a serious threat, especially because, as we will see, they were not carrying firearms.

The second indication of military-type behaviour that the Somalis were said to have exhibited was proceeding in a “bounding overwatch”. This is the term Cpl Klick applied to the way the two Somalis moved around the south wire of the perimeter.¹⁸⁶ Significantly, he is the only one to use this term; in his statement he referred instead to “monkey-walking” from bush to bush.¹⁸⁷ This is in sharp contrast with Cpl Lalancette’s description. When questioned about this in testimony, Cpl Klick defined it as one man moving while the other one watched, or progressing in a “leap-frog” manner. Even if it were true, it would be simply another instance of applying a military term to behaviour any thief would exhibit. Moving in this way would have required no great degree of sophistication or military training and was indistinguishable from what a thief would do. Yet this was also taken to indicate military training and resulted in the presumption that the Somalis were armed.¹⁸⁸

The third element of the so-called military behaviour of the Somalis was what Capt Rainville described as a “leopard crawl” which they used in the final 100 metres of their approach to the Helicopter compound.¹⁸⁹ A “leopard crawl” involves lying prone on the ground and moving on one’s elbows and knees, a technique Capt Rainville demonstrated during his testimony. Like some of the other terms just discussed, this term was used in Capt Rainville’s testimony but did not appear in his written statements directly after the incident. His statement for Capt Hope indicates that they crawled¹⁹⁰ but does not mention a leopard crawl.

We see this as an obvious attempt to over-emphasize the danger posed by the Somalis, an attempt that is not supported by the testimony of the soldiers under Capt Rainville’s command. Cpl Klick says the men did not crawl toward the Helicopter compound, but rather moved rapidly once they left the south-west corner of the Engineers perimeter.¹⁹¹ Cpl Klick’s view of their movements is supported by Sgt Plante, the only other member of the patrol who says he saw the Somalis in this area. Sgt Plante says they did not crawl the final 100 metres to the Helicopter compound, but rather ran quite quickly.¹⁹² The testimony of one other member of the patrol is significant and relevant to this issue: Cpl Favasoli stated that he never saw the Somalis pass the position of Detachment 63, crawling or otherwise; they never went to the Helicopter compound.¹⁹³ (This point is discussed in greater detail later in the chapter.)

Clearly, then, the attempts of Recce patrol members to characterize the actions of the Somalis as a “military approach” to the Engineers compound or the Helicopter compound simply do not stand up to detailed scrutiny. There was nothing in the behaviour of the two intruders to indicate that they might be other than thieves. There is no credible evidence that they performed a “clover-leaf recce”, that they proceeded in a “bounding overwatch”, or that they moved in a “leopard crawl”.

PEGASUS

Original Photograph was,

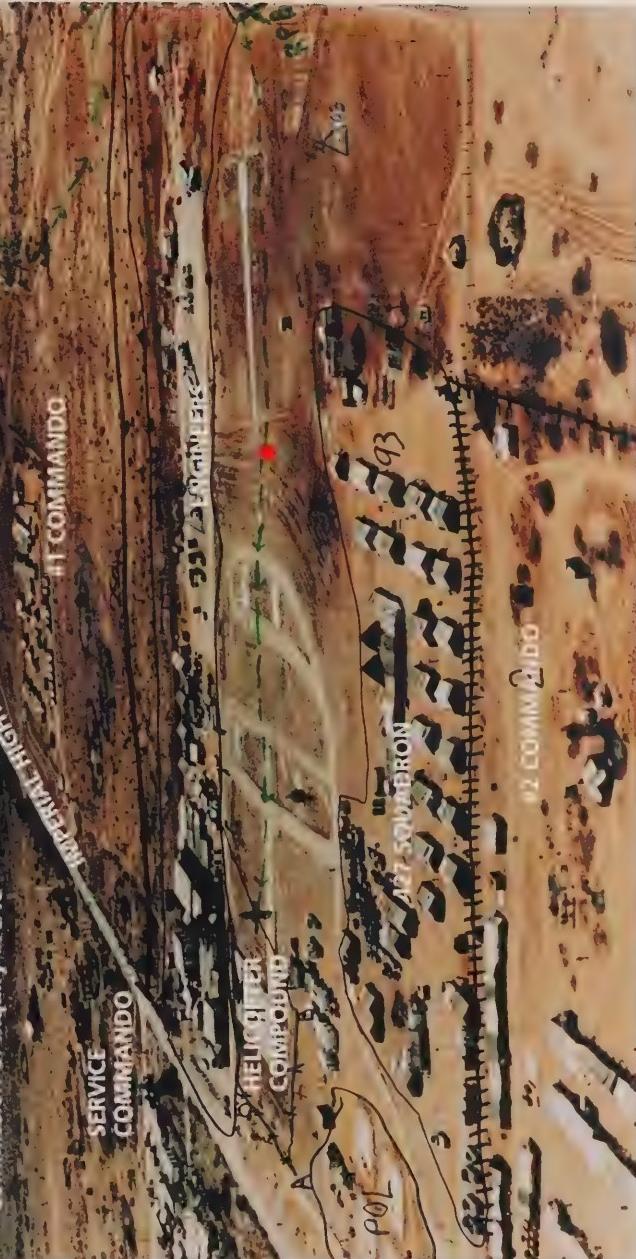
- Exhibit "E" Court Martial Capt. Rainville
(Green & Black Markings Were made
at the Court Martial)

HEADQUARTERS

#3 COMMANDO

#4 COMMANDO

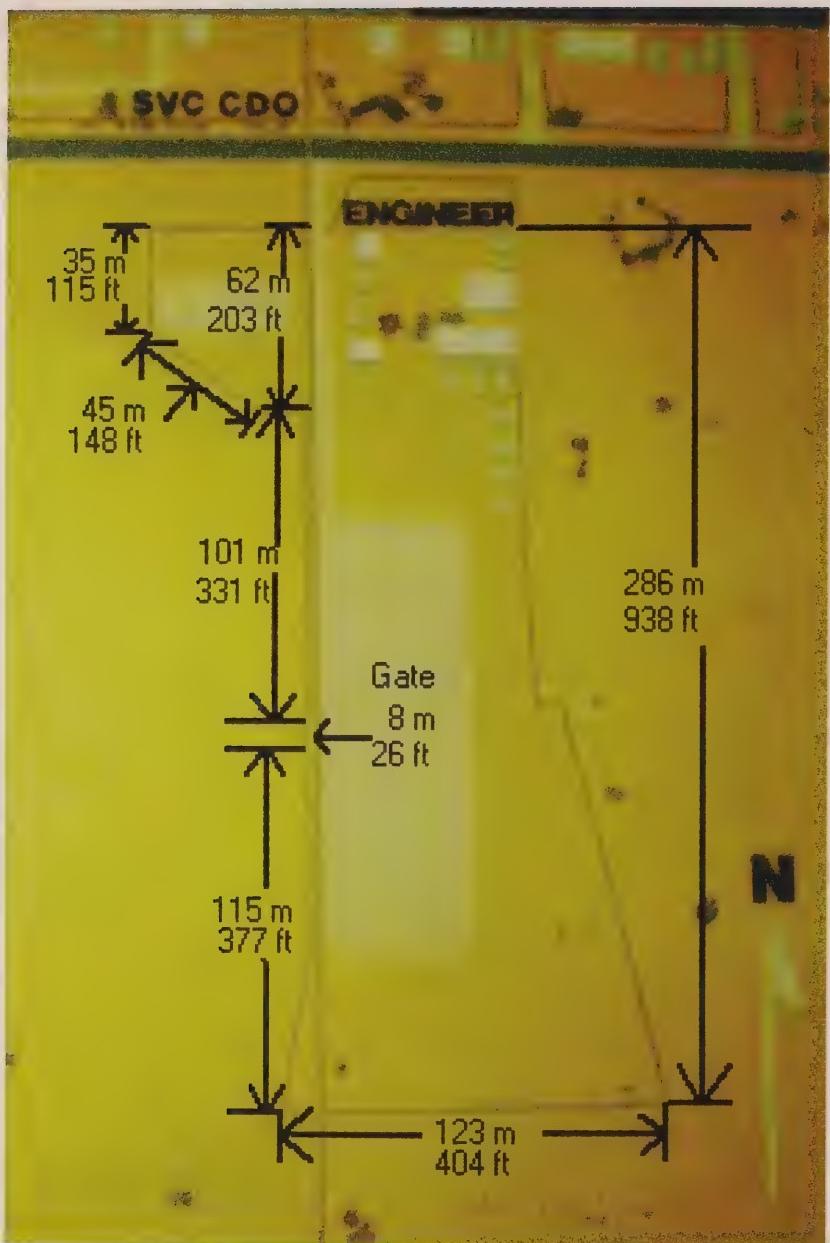
Sit #R2907
Commission of Inquiry #P246



LEGEND

- Well
- Engineers & Helicopter Compound
- #2 Commando Compound Area in between was bulldozed and then occupied by 427 Squadron sometime after the March 4, 1993 incident.

The Canadian Airborne Regiment Battle Group camp at Belet Huen depicting the various compounds.



Computer generated scale diagram of the Field Squadron of Engineers compound and the Helicopter compound depicting the dimensions of the two compounds. (Commission of Inquiry Exhibit P245.1)

The Recce patrol members used military terms to describe the actions of the two Somalis as a way of justifying their perception of a threat, thus justifying the assumption that they were armed and dangerous. There is nothing to indicate objectively that either of the Somalis demonstrated any military training in their approach; they merely exercised the caution one would expect of thieves operating at night.

The Threat Posed by the Somalis

It is clear from the actions of the Recce patrol that evening that the Somalis posed no threat to patrol members or to Canadian installations. There is no other logical explanation for the manifest lack of fear or caution displayed by Recce patrol members during the mission. It is also clear from the instructions given by Capt Rainville before the mission that no great danger was anticipated, as there was no requirement for the soldiers to wear helmets or protective vests.

Despite the fact that, to a man, patrol members maintained in their answers to the supplementary questions¹⁹⁴ that they had reason to believe the Somalis might be armed, the incontrovertible fact is that the Somalis had no weapons other than a ritual knife, which was not removed from its sheath during the entire incident. This fact was evident to the Recce Platoon, as the Somalis were under constant observation from the moment they approached the wire on the east side of the Engineers compound, and none of the soldiers saw any weapons on either man.

The log entries show that Cpl Lalancette, the sentry in the 1 Commando tower, observed two Somalis walking along a path that ran between the 1 Commando compound and the Engineers compound at about 7:50 p.m. through his NODLR. Cpl Lalancette saw that they were unarmed and reported their presence near the wire to the Engineers,¹⁹⁵ who passed the information along to Capt Rainville.¹⁹⁶ At this point, the observation was picked up by the Recce patrol (see Annex G).

From the point at which the two Somalis passed the south-east corner of the Engineers compound, Detachment 64A watched them move slowly along the wire for approximately 10 to 15 minutes. At no time did anyone in Detachment 64A see a weapon on either man. Cpl Smetaniuk was the first member of Detachment 64A to spot the Somalis as they approached the south-east corner of the perimeter, and he stated that he saw no weapons.¹⁹⁷ Cpl Leclerc stated that he could see the Somalis with the naked eye from 40 metres away and he saw no weapons.¹⁹⁸ The same applies to MCpl Countway, the commander of Detachment 64A, who also watched the Somalis for 10 to 15 minutes and saw no weapons.¹⁹⁹

Detachment 69 also had the Somalis under observation as they moved along the southern edge of the perimeter. Once they reached the south-west corner they were picked up visually by Detachment 63. The members of Detachment 63 also saw no weapons.²⁰⁰ This likely accounts for the almost complete lack of caution on the part of the soldiers when they confronted the Somalis. Had they thought they were facing armed saboteurs, they would undoubtedly have conducted themselves much differently. For example, Cpl King stated that he got up and left cover based solely on Sgt Plante's words, "Get them". He had no other information; he apparently saw nothing and simply assumed that the shot he heard must have been a warning shot from Sgt Plante and that he was therefore authorized to proceed quickly through the escalation of response set out in the Rules of Engagement.²⁰¹

Further evidence of the lack of threat lies in the actions of Cpl King, who ran blindly after the Somalis in the dark after shots were fired. He stated that this was somewhat foolish, because they might have been armed, but that he had reacted on instinct. It is more likely, however, that his reaction was based on the fact that the Somalis were unarmed and posed no threat.²⁰² Cpl King claimed that, as a general rule, he always assumed that Somalis were armed. This was in keeping with the surprising standing order to treat all Somali males over 14 years of age encountered at night as armed.²⁰³ However, his behaviour on the night of March 4th clearly contradicts his claim. It is difficult to give any weight to Cpl King's assertion that he felt threatened,²⁰⁴ as he saw no weapons, and the man he shot at was running away from him.

There are no instances in the statement of Cpl King that indicate any confusion or fear during the events of March 4th, but he claims to have experienced personal fear as a result of Sgt Plante firing his shotgun.²⁰⁵ Yet he came charging out blindly from his position and fired to wound, leaving the suspected saboteur potentially able to return deadly fire.²⁰⁶ It is clear, then, that Cpl King did not at any time feel threatened enough to shoot to kill.²⁰⁷ The same can be said for Cpl Klick, who stated that he had Mr. Aruush locked in his sights when he paused at the south-west corner of the perimeter, but decided not to shoot because he could see no weapons and could detect no intent to throw a grenade or a molotov cocktail.²⁰⁸

This also accounts for the fact that Capt Rainville felt safe enough to leave cover and run after the Somalis²⁰⁹ and to direct Sgt Plante, Cpl King and Cpl Favaroli to chase Mr. Aruush while he remained alone with Mr. Abdi.²¹⁰ Cpl Favaroli admitted that he never really felt threatened, particularly not after Mr. Abdi was wounded,²¹¹ and Sgt Plante also admitted that he never felt threatened during the entire incident.²¹² He fired his weapon not out of fear but rather to complete his mission of capturing an infiltrator.²¹³

Detachment 63's use of bright white flashlights (instead of the red-filtered flashlights common on military missions) indicates that they were more interested in catching the Somalis than in concealing their position.²¹⁴ Cpl Favasoli also did not feel much concern about the safety of Detachment 64A, as he had seen no weapons on Mr. Aruush or Mr. Abdi. As Mr. Aruush ran toward Detachment 64A, Cpl Favasoli assumed they would have the advantage over him.²¹⁵

Capt Rainville seemed quite confident that Mr. Aruush posed no danger to Detachment 64A, because he called out to them, "He's yours", without mentioning that the man was armed or giving any other such warning.²¹⁶ It also did not occur to Cpl Favasoli to warn Detachment 64A; he would have been surprised, he said, if they did not know what was happening or could not see Mr. Aruush running toward them.²¹⁷ Nor did the members of Detachment 64A behave as if they perceived a threat from the Somalis, as is clear from the actions of Cpl Smetaniuk, who ran after Mr. Aruush without his weapon, even after Detachment 63 had already shot Mr. Abdi.²¹⁸ The notion that a trained soldier would leave cover and run blindly, without his weapon, after an armed enemy is simply preposterous. The only conclusion we can reach is that Mr. Aruush and Mr. Abdi posed no threat whatsoever to Canadian troops or Canadian installations at any time during the March 4th incident.

The Alleged Breach of the Wire

The question of whether Mr. Aruush and Mr. Abdi breached the wire at the Helicopter compound is crucial to reaching an accurate conclusion about Recce Platoon's justification for the shootings. Capt Rainville and Sgt Plante maintain that Mr. Abdi and Mr. Aruush got into the wire at the Helicopter compound; this was the action that was said to constitute a hostile act and therefore justified an attempt to capture the men. We therefore need to determine whether the evidence supports the contention of Capt Rainville and Sgt Plante that the wire at the Helicopter compound was breached.

As the incident began, Detachment 63 was concealed behind a cistern or well to the west of the Engineers compound (see Annex E). The cistern was a rectangular concrete container, about four feet wide by seven or eight feet long; it was located about 75 metres due west of a temporary gate in the west perimeter of the Engineers compound and more or less equidistant (110 to 140 metres) from the south-west corner of the Engineers compound and the south perimeter of the Helicopter compound.²¹⁹

The three members of Detachment 63 were crouched behind the north wall of the well, facing south, with Sgt Plante in the middle, Cpl Favasoli to the east and Cpl King to the west.²²⁰ When Cpl Favasoli first spotted Mr. Abdi

and Mr. Aruush, they were about 100 to 200 metres to the south-east of the detachment and were walking in a westerly or northwesterly direction, directly toward their location.²²¹

Cpl Favaroli observed the men through his night-vision goggles.²²² Within two or three minutes, according to Cpl Favaroli, the men had made their way in a casual, normal walk to within 20 to 25 metres of Detachment 63's position behind the well; they stopped at a rock-pile that lay between the well and the south-west corner of the Engineers compound, at a distance Cpl Favaroli estimated at 20 to 25 metres from the west perimeter of the compound.²²³ The two men sat down at the rock-pile; they talked to each other and gestured in the general direction of the compound.²²⁴ This testimony agrees with that of Cpl Klick, who also saw the men squat down and observe the Engineers compound.²²⁵ (See Annex A.)

Cpl Klick, stationed inside the Engineers compound along with Capt Rainville, saw the two Somalis to the south of the compound, apparently arguing about and gesturing toward various parts of the compound: one was apparently pointing to the food and water containers that had been set out as bait; the other — who appeared to Cpl Klick to be in charge — apparently rejected this idea and pointed to the north-west, toward 2 Commando and the Helicopter compound.²²⁶ Cpl Klick estimated that the two Somalis remained at this location for between three and ten minutes.²²⁷

According to Cpl Klick, the man who seemed to be in charge prevailed; Mr. Abdi and Mr. Aruush got up and moved away in a southwesterly direction where they disappeared behind some shrubbery before beginning to proceed northward.²²⁸ He then lost sight of them for between 5 and 15 minutes, after which he saw them near a mound of brush and rocks. He estimated that the mound was 30 to 50 metres south-west of the south-west corner of the Engineers compound, although he conceded it could have been 50 metres further north, in roughly the same location as Cpl Favaroli put the rock-pile.²²⁹ According to Cpl Favaroli, at no time while he was observing them did the Somalis appear to be trying to hide or conceal themselves.²³⁰ At this point, Sgt Plante called over the radio for radio silence.²³¹

According to Cpl Favaroli, the two Somalis sat and talked on the rock-pile for about three minutes (this agrees with Cpl Klick's recollection²³²), at which point Cpl Favaroli ducked his head behind the well wall, having remembered that his light-coloured hat might be visible if the Somalis looked in that direction.²³³ Cpl Klick says he then saw the man who appeared to be in charge take off his white shirt and wrap it around his waist.²³⁴ Cpl Favaroli stopped looking at the Somalis and focused instead on Sgt Plante, who continued to observe them, and awaited a signal from the sergeant.²³⁵ Cpl Favaroli estimates that he remained in that position, with his head behind the wall

of the well looking at Sgt Plante, for about three minutes.²³⁶ During that time, according to Cpl Favaroli, Sgt Plante continued to look to the south and did not turn to look west or north.²³⁷

Cpl Favaroli testified that he then heard Capt Rainville's voice over the radio. He was concerned that the Somalis might hear the radio communication, since as far as he knew they were only about 25 metres away, still at the rock-pile. So he picked up the radio and quietly gave a "63 — Wait — Out" signal, meaning not to call that detachment.²³⁸ At that point, Sgt Plante stood up, pointed his shotgun south, turned on the flashlight, shouted "halt" a couple of times, then fired his shotgun. After this initial shotgun blast and then, a few seconds later, a second one, Cpl King also fired two shots from his C7. Sgt Plante and Cpl King then went off in pursuit of the Somalis.²³⁹

The version of events just recounted differs sharply from the version presented before us by Capt Rainville and Sgt Plante and, in some ways, that of Cpl King. We therefore need to assess these alternative versions and weigh them against that presented by Cpl Favaroli. Sgt Plante agreed that the touching of the perimeter wire by the Somalis would trigger the patrol to move in and apprehend them.²⁴⁰ Sgt Plante recalls that when he first saw the two men, they were about 75 metres away, near the south-west corner of the Engineers compound.²⁴¹ Like Cpl Favaroli, Sgt Plante recalls that the men sat down at a point south of Detachment 63's location and about 50 metres from the west perimeter of the Engineers compound — although Sgt Plante does not recall the rock-pile.²⁴²

Sgt Plante testified that the men got up and began to move north, up the west side of the Engineers compound.²⁴³ As they did so, according to Sgt Plante, they kept a constant distance between them, walked in a bent-over posture, hid behind bushes, and stopped periodically to look carefully in all directions.²⁴⁴ This does not quite fit with Capt Rainville's testimony. Capt Rainville recalled hearing Sgt Plante's call for radio silence soon after the two Somalis rounded the south-west corner of the Engineers compound. He saw them proceed north from the south-west corner, stop and sit down on the rock-pile. They sat there for about ten minutes and were looking north, in the direction of the Helicopter compound.

According to Capt Rainville, they then got up and moved north, on all fours in a "leopard crawl", toward the Helicopter compound, quickly covering the distance between the rock-pile and the Helicopter compound.²⁴⁵ As we have seen, however, Mr. Abdi and Mr. Aruush did not in fact move in a "leopard crawl". According to Cpl Klick, as the two men moved north, he lost sight of them when they were about parallel with the temporary gate in the west perimeter and slightly north of the well, about 20 to 25 metres from the wire.²⁴⁶ When they began to move north, Cpl Klick says he heard Sgt Plante's call for radio silence.²⁴⁷ Cpl Klick estimated that it took the

two Somalis about five minutes to make their way from the mound off the south-west corner of the perimeter to the point where he lost sight of them near the temporary gate.²⁴⁸

As the Somalis moved north and approached the location of Detachment 63, Sgt Plante claimed that he moved his body so that he could watch the east and the north; he told Cpl Favaroli and Cpl King to keep quiet and shut off the radio, which he had already set down.²⁴⁹ Then he maintains that he told Cpl Favaroli and Cpl King to hide, leaving him as the only one following the movements of the Somalis. Sgt Plante did not think it was important to tell his two subordinates that the Somalis were moving past their location and to the north — that is, behind their position.²⁵⁰ When confronted with Cpl Favaroli's testimony that he was watching Sgt Plante and never saw him look in any direction other than south, Sgt Plante answered, unconvincingly, that he could have followed the Somalis with his eyes, without moving his body.²⁵¹ Given the distance between the well and the Helicopter compound, where Sgt Plante maintains the Somalis went, this is simply not credible.

According to Sgt Plante, it took five minutes at most for the two men to reach the Helicopter compound.²⁵² He testified that they moved quickly, but in his initial statement to Capt Hope, he described their approach to the helicopters as very slow.²⁵³ He could not explain the contradiction. He did not recall seeing them crawling during their approach to the Helicopter compound.²⁵⁴

Sgt Plante said that, on reaching the southern fence of the Helicopter compound, one of the Somalis lay down while the other used a piece of clothing or a towel to lift the wire.²⁵⁵ At this point, Sgt Plante says, he told Cpl Favaroli and Cpl King to get ready to move,²⁵⁶ but neither recalls hearing any instructions from Sgt Plante. Sgt Plante does not recall whether he told his men that the Somalis were in the wire.²⁵⁷ This is difficult to believe, given that this was the event that was supposed to trigger an attempt to apprehend an intruder.

Sgt Plante testified that he remained at the well during all of this and did not have the detachment follow the Somalis because he did not want to reveal his position to the Somalis.²⁵⁸ However, this explanation ignores the fact that Sgt Plante and his detachment would have revealed their position simply by remaining on the north side of the well. Sgt Plante himself says the Somalis were looking around in all directions as they moved north. Again, this explanation simply is not credible.

There are other fundamental problems with Sgt Plante's testimony concerning what happened when the Somalis were, in his account, at the wire. According to Sgt Plante, when the Somalis started to penetrate the perimeter wire, he turned away briefly to get ready to move in on them: he put down

the radio handset and told his men to get ready. He estimates that this took perhaps as long as 15 seconds. In the meantime, he heard a sheet-metal sound that caused him to look up; when he did so, he saw that the Somalis were running back toward the south and had already covered half the distance between the Helicopter compound and the well where Detachment 63 was located.²⁵⁹

This sequence of events presumes several things that are impossible to accept: that at the critical moment of the hostile act that would have allowed the Recce Platoon to begin the escalation of response, Sgt Plante took up to 15 seconds to remove the radio handset (this would have taken no more than 1 or 2 seconds according to Cpl Favaroli²⁶⁰); that Sgt Plante gave instructions to his men, which they do not recall receiving; and that the 15 seconds or less when Sgt Plante says he looked away was sufficient time for the Somalis to get out from under the wire and run at least 100 metres. This is simply impossible.

Sgt Plante testified that he then moved out from behind the well, to the east, to intercept the men. At the same time, he heard Capt Rainville shout an order, but he did not understand it at the time.²⁶¹ Sgt Plante says that he then moved out immediately and faced north to intercept the Somalis, but he had taken only a few steps in an attempt to cut them off before realizing that he would not be able to do so.²⁶² He stopped, gave a verbal warning, then fired warning shots toward the south-east.²⁶³ By that time, the Somalis were south of him. This means that they had extracted themselves from the wire and run a distance of 175 metres from it, all within about 18 seconds. This would have been physically impossible. It is quite likely that Sgt Plante could not have caught the Somalis, but highly unlikely that he ever faced north.

Cpl King, the third member of Detachment 63, was positioned near the north-west corner of the well. He testified that he lay prone behind the well, watching his arcs of fire to the south-west and west of Detachment 63's position. Apart from Sgt Plante's call for radio silence, he saw and heard nothing concerning the two Somalis until Sgt Plante shouted "Get them" and Detachment 63 engaged the Somalis as they fled south.²⁶⁴ Cpl King also asserted that if the Somalis had been running within 50 metres to the north of Detachment 63's position as claimed he would have seen them.²⁶⁵

Capt Rainville's testimony differs on these events. According to him, as the Somalis moved north to the Helicopter compound, he radioed Detachment 63 and told them to follow the two men as they moved north; he would do the same from inside the compound. Capt Rainville acknowledged that no one at Detachment 63 recalled receiving this communication. He testified that his plan was to force the Somalis back from the Helicopter perimeter and toward Detachment 63, which would apprehend them.²⁶⁶ However, Detachment 63 was not where Capt Rainville thought it would be²⁶⁷ and was too close to his own location to make a sandwich manoeuvre possible.

When the Somalis had almost reached the Helicopter compound perimeter, Capt Rainville says he left the truck, telling Cpl Klick to cover him.²⁶⁸ According to Capt Rainville, within two or three minutes he had reached the south-east corner of the Helicopter compound where it joined the west perimeter of the Engineers compound. By then, he said, the Somalis were already at the Helicopter compound perimeter wire and were attempting to breach it; one was holding the wire with a piece of clothing or cloth while the other tried to get through.²⁶⁹ However, Capt Rainville is contradicted by Cpl Klick concerning this sequence of events.

Shortly after he lost sight of the Somalis, Cpl Klick recalls clearly that Capt Rainville left the truck and moved west toward the western fence.²⁷⁰ Cpl Klick does not recall Capt Rainville asking for cover when he left the truck, and Cpl Klick did not cover him, maintaining his focus on his arcs of fire to the south.²⁷¹ According to Cpl Klick, there were no radio communications between the time Sgt Plante called for radio silence and when Capt Rainville left the truck, and both of Detachment 69's radios were left with Cpl Klick in the truck.²⁷²

Less than two minutes later, according to Cpl Klick, he heard the rattle of concertina wire as Capt Rainville tried to open the gate, almost due west of the truck. About 30 seconds later Cpl Klick heard Capt Rainville shout "Get them". Cpl Klick looked over at the gate again and saw that Capt Rainville was gone.²⁷³ Ten to 15 seconds after hearing Capt Rainville shout "Get them", Cpl Klick heard members of Detachment 63 shout "halt" in English, French and Somali. This was followed immediately by gunfire.²⁷⁴

Capt Rainville said he did not hear the sheet metal sound that Sgt Plante heard, nor did he hear any other loud noise that would have alerted the Somalis to his approach; instead he said the two men began to flee when they noticed him standing about 25 metres from them on the other side of the wire. Both parties ran south, with Capt Rainville still inside the Engineers compound. Capt Rainville says he shouted "Get them" a couple of times during the pursuit and that he managed to get out of the compound by jumping over the fence at the gate, where the wire was only about one metre high. He heard the first gunfire from Detachment 63 at about the moment he crossed over the fence.²⁷⁵

However, Cpl Klick estimated that the distance from the truck to the west gate was 45 metres; a round trip north to the junction of the Helicopter and Engineers compounds and back to the west gate would have been more than 200 metres.²⁷⁶ Cpl Klick estimated that about two minutes elapsed between the time Capt Rainville left the truck and when he heard Capt Rainville shout "Get them"; by his estimate, just five minutes elapsed between the time the Somalis rounded the south-west corner and began to move up the west side of the Engineers compound and when the final shots from Detachment 64A

were fired.²⁷⁷ This was clearly not enough time for Capt Rainville to move quietly up to the Helicopter compound, then run back to the west gate, shouting for Detachment 63 to "Get them".

The testimony of Cpl Lalancette, the sentry in the 1 Commando tower, is relevant here. He was not involved in the shootings and therefore has no interest in advancing a particular version of events. Using the long-range night vision equipment, Cpl Lalancette saw the Somalis move north from the south-west corner of the Engineers compound. From his location he mistakenly thought that the Somalis had breached the south perimeter of the Engineers compound, so he conveyed this information by phone to the 1 Commando command post. While he was still on the phone with Cpl Noonan, the signaller on duty, he heard gunshots.²⁷⁸ Cpl Lalancette estimates that three to four minutes elapsed between when he thought he saw the Somalis enter the compound and when he saw a wounded man on the ground.²⁷⁹ This time frame supports Cpl Favaroli's recollection but does not support Capt Rainville's contention that the Somalis carried out a reconnaissance of the Helicopter compound for 10 minutes before approaching it.

The 1 Commando logs bear out Cpl Lalancette's testimony concerning the timing of events. Cpl Noonan logged in Cpl Lalancette's first call advising of the presence of the Somalis, on the east side of the Engineers compound heading south, at 20:00 hours (8:00 p.m.). He passed that information on to the Engineers squadron command post at 20:02 hours. Cpl Lalancette's call advising that the Somalis had penetrated the south end of the Engineers compound came at 20:10 hours according to the log. Cpl Noonan passed this on to the Engineers at 20:11 hours. Cpl Noonan noted in the 1 Commando log that he heard gunshots at 20:14 hours.²⁸⁰

One other element tends to refute the contention of Capt Rainville and Sgt Plante that the Somalis got into the wire at the Helicopter compound: the absence of any cuts or marks from razor wire on either Mr. Abdi or Mr. Aruush. When he saw the wounded man, Mr. Abdi, after the shooting, Cpl Favaroli did not notice razor or barbed wire cuts on his body.²⁸¹ Likewise Sgt Groves, commander of the Quick Reaction Force that night, did not see cuts from razor wire or tears in the clothing of Mr. Aruush, the man who died in the incident,²⁸² nor did Cpl Mountain, the medic who came to the scene with the ambulance.²⁸³ WO Ashman, a medical assistant at Unit Medical Services, where the shooting victims were taken, saw no signs of fresh cuts from razor or barbed wire on either man.²⁸⁴ The attending surgeon, Maj Armstrong, also saw no evidence of fresh cuts on either man.²⁸⁵ Moreover, the evidence of a variety of witnesses indicates that both men were still wearing a shirt of some sort at the time.²⁸⁶ According to WO Marsh, no shirt or jacket was found near the Helicopter compound.²⁸⁷ If the Somalis were under the wire and had

to exit hastily, as claimed by Capt Rainville and Sgt Plante, the likelihood of fresh razor wire cuts would be great. Yet no evidence was found of such cuts.

Until he heard Capt Rainville's version of the incident at the initial debriefing early the next morning, Cpl Favaroli had no inkling that Mr. Abdi and Mr. Aruush had done anything other than sit on the rock-pile.²⁸⁸ But even then, when Capt Rainville said that the Somalis had approached the wire and were trying to infiltrate the compound when they were challenged by Sgt Plante, Cpl Favaroli assumed that he was referring to something they had done at the south perimeter of the Engineers compound, before he saw them walking toward the rock-pile.²⁸⁹

Cpl Favaroli did not realize that anyone was suggesting that the men had gone to the Helicopter compound until he saw a Canadian newspaper clipping, received from home about a month later. At that time, he simply dismissed the information as a mistake by the media.²⁹⁰ It was not until he was interviewed by counsel for this Inquiry, in February 1996, that Cpl Favaroli realized that this was, in fact, Capt Rainville's version of events.²⁹¹

Soon after the shootings, Cpl Favaroli had doubts about the patrol's justification for using deadly force that night. He also felt that he was expected to answer questions about the incident in such a way as to allow for or support a justification of the shootings.²⁹² In cross-examination, Cpl Favaroli acknowledged that it was not easy for him to give his testimony, since it contradicted that of Capt Rainville and Sgt Plante and tended to discredit a key element in the attempt to justify the shootings.²⁹³

Cpl Favaroli also found it strange that neither Sgt Plante nor Cpl King said or did anything at the time to indicate that the Somalis had moved north behind them or were attempting to breach the wire. After all, the plan was to catch infiltrators in the wire.²⁹⁴ Moreover, one would have expected a warning from Sgt Plante to stay still, or even perhaps to move to the other side of the well, so as not to be detected by the Somalis moving north, right past the location of Detachment 63, on their way to the Helicopter compound.

Given the available evidence — and, in particular, the various contradictions in the evidence — we do not find credible accounts claiming that the two men who were shot on the night of March 4, 1993 attempted to breach the wire at the Helicopter compound.

As is apparent from the preceding review of the evidence, only Capt Rainville and Sgt Plante claim to have seen Mr. Abdi and Mr. Aruush approach the Helicopter compound. At the same time, as the key instigators in the patrol's use of deadly force that night, Capt Rainville and Sgt Plante — of all the members of the Recce patrol — had, and continue to have, the greatest personal interest in trying to offer and strengthen a justification for the shootings.

The physical evidence does not support their story, however. There were no indications of razor cuts on either Mr. Abdi or Mr. Aruuush. Both men still had their shirts on, and no clothing or like material was found near the Helicopter compound. If they removed clothing for use in pushing aside the wire, what happened to this clothing? If they did not, why did they have no cuts? The time frame suggested by Capt Rainville and Sgt Plante is internally inconsistent, and inconsistent with the testimony of Cpl Klick, Cpl Favasoli, Cpl King, Cpl Lalancette, and Cpl Noonan and with the logs for that night.

But it is the evidence of Cpl Favasoli, who was a member of Detachment 63 along with Sgt Plante and Cpl King, that casts some of the greatest doubt on the statements that the Helicopter compound wire was breached. Cpl Favasoli says that he never saw the two Somalis move north of the rock-pile, which lay to the south-east of Detachment 63's location. Cpl Favasoli was supposed to monitor the area east and south of the well, and he was observing the Somalis closely until he ducked behind the well to avoid detection. Sgt Plante remained peering over the top of the well.

From that point on, Cpl Favasoli kept his eyes on Sgt Plante, waiting for a sign that the Somalis had moved to the wire and were attempting to breach it, since that, by all accounts, would be their cue to act. But the signal to move never came. Watching Sgt Plante, it was Cpl Favasoli's impression that the Somalis never moved from the rock-pile before Sgt Plante, Cpl King and/or Capt Rainville made their presence known.

Likewise, the evidence of Cpl Favasoli indicates that Sgt Plante conveyed no indication, by words or actions, that the Somalis were moving north toward the detachment's position. Cpl King — who was lying prone, watching the area west and south-west of the well — also recalls no indication that the Somalis were moving toward or past the detachment.

This is very puzzling, since the purpose of the mission was to capture infiltrators, and the agreed strategy was to catch them in the wire. One would have expected Detachment 63 to follow the men if they intended to carry out the strategy. Capt Rainville testified that he radioed Detachment 63 to follow the Somalis, but no one at Detachment 63 heard such a message. Further, Cpl Klick said there was no radio communication after Sgt Plante asked for radio silence and before Capt Rainville left the truck, and Capt Rainville left both radios in the truck with Cpl Klick.

Moreover, even if one accepted Sgt Plante's explanation that he did not follow the Somalis because he did not want to be detected, how can one explain his complete failure to take even the most basic and instinctive steps to stay hidden as the two men moved north? If the Somalis moved north from the rock-pile, they would have been heading even closer to Detachment 63's location. Once the Somalis were north of the well, there would have been nothing to conceal Detachment 63.

Sgt Plante testified that he told Cpl Favaroli and Cpl King to keep quiet and to hide. The evidence of Cpl Favaroli and Cpl King contradicts this completely. Nor did Sgt Plante make any further effort to conceal himself. If they preferred to stay concealed instead of following the Somalis, another logical response might have been to move around to the south side of the well. This was not done either.

Failure to follow the Somalis if they were approaching the Helicopter compound risked two unfavourable results: compromising the objective of apprehending the infiltrators by being too far away when they breached the wire; or, if the Somalis had in fact been saboteurs, leaving the Helicopter compound vulnerable to attack. From where they were, more than 100 metres away, Detachment 63 could not have prevented at least one of the two Somalis from getting through the wire or either of them from lobbing something like a grenade over the wire. Yet some witnesses, including Sgt Plante, Capt Rainville and Cpl Klick, claimed to believe that the way the Somalis approached the Helicopter compound suggested military knowledge or training.

Capt Rainville says he moved north, inside the Engineers compound, to confront the Somalis; he radioed the information to Detachment 63 and told them to do the same. But no one at Detachment 63 recalls hearing such a transmission. If Detachment 63 was supposed to respond to an opportunity to catch infiltrators in the act, one would have expected Capt Rainville to rebuke Sgt Plante. There was no evidence to suggest that they were supposed to wait for Capt Rainville's word before apprehending anyone — only before shooting. But there was no rebuke; in fact Capt Rainville nominated Sgt Plante for a citation following the mission of March 4th.²⁹⁵

No one saw Capt Rainville go north toward the Helicopter compound; on the contrary, Cpl Klick's evidence is that Capt Rainville moved directly west after leaving the truck and that less than two minutes later, he heard the rattling of concertina wire as Capt Rainville tried to leave the Engineers compound by the temporary gate in the west fence. Coupled with Cpl Klick's testimony about the lack of radio communication before Capt Rainville left the truck and the fact that he left both radios in the truck, this tends to suggest another more likely occurrence: Capt Rainville went straight across the Engineers compound to the west gate area; he did not take a rapid and unnoticed round trip of more than 200 metres north-west from the gate to the junction of the Engineers compound and the Helicopter compound and back.

The other question raised by Sgt Plante's evidence is how the Somalis could possibly have passed by Detachment 63 if they were running from the Helicopter compound perimeter. Sgt Plante claims that he took his eyes off them for about 15 seconds as he prepared to move. But Cpl Favaroli's evidence is that it only took a couple of seconds to remove the radio handset and set it down.

It is difficult to believe that the Somalis could have extracted themselves from the wire and run back, covering most of the distance between the Helicopter compound and Detachment 63, before Sgt Plante resumed his observation. It is also very hard to believe that Sgt Plante would have taken his eyes off the Somalis for as long as 15 seconds at that crucial moment. In addition, Cpl Favasoli testified that Sgt Plante's body and his weapon were pointed only south and south-east. This suggests that when Sgt Plante first challenged the fleeing men, they were already south of Detachment 63.

Three witnesses claim to have seen the Somalis move north from the rock-pile, but there are discrepancies in their descriptions of how the Somalis moved. Sgt Plante said they were walking but bent over, whereas Cpl Klick and Capt Rainville said they crawled toward the Helicopter compound. In his statement to Capt Hope the day after the shooting, Sgt Plante described the Somalis' approach to the Helicopter compound as very slow. But in his testimony before us, he indicated that the two men moved quickly. It bears repeating that this claim of a military approach is contradicted unequivocally by Cpl Favasoli and Cpl Lalancette.

Finally, from the fact that only a ritual knife was found on one of the men, it seems clear that they were not saboteurs or military personnel. The evidence shows clearly that the Somalis did not attempt to breach the wire at the Helicopter compound and, indeed, that they did not try to breach the wire at any other point before being confronted by Capt Rainville and Detachment 63. The assertion that they breached the wire of the Helicopter compound, thereby committing a hostile act, is manifestly not borne out by the evidence.

The Circumstances of the Shooting by Detachment 63

The circumstances under which Detachment 63 made the decision to shoot Mr. Abdi as he fled are key to understanding the March 4th incident, as this shooting set in motion the series of events that led to the fatal shooting of Mr. Aruush by Detachment 64A a short time later. There is very little convergence in the testimony of those involved in this shooting, and thus little consistency in accounts of the events. What we must determine is which version of events is most credible and what the significance of this shooting was for the incident as a whole.

What we need to do, then, is to examine what led the members of Detachment 63 to decide to apply maximum force and to determine whether they were justified in doing so. We accomplish this by examining the events

as recounted by patrol members and determining — as near as possible — what exactly occurred. We then can determine what conclusions Detachment 64A would have been able to draw from the actions of Detachment 63.

We have seen that Captain Rainville instructed his men that the object of the mission was to capture anyone who attempted to breach the perimeter and to use whatever force was necessary to accomplish the objective, including shooting at anyone fleeing. This directive led to a heightened anticipation of conflict, as an attempt to capture carried the likelihood of pursuit and physical contact. The heightened state of readiness also led to a greater likelihood of firearms being used; this was attested to by soldiers not involved in the shooting, including Sgt Groves, Cpl Dostie and Cpl Chabot, who all anticipated shooting when they learned that the Recce patrol was going out that night.²⁹⁶

In the original plan for the mission, Detachment 63 was to have been located 100 to 150 metres off the south-west corner of the Engineers perimeter.²⁹⁷ However, Sgt Plante determined that the best position for the detachment in terms of available cover was behind the well, much further north of the position planned by Capt Rainville.

Capt Rainville thought Detachment 63 was positioned in accordance with his original plan, but he subsequently admitted in testimony that they could well have taken another position without his knowing about it,²⁹⁸ and this is indeed what happened. The detachment took up a position at the well, which was generally agreed (in the testimony of detachment members as well as Capt Mansfield and Capt Kyle) to be some 75 metres west of the Engineers perimeter and 110 metres south of the Helicopter perimeter (see Annex E).²⁹⁹ This put them slightly south and almost directly west of the gate in the centre of the west side of the Engineers perimeter, much closer to the location of Detachment 69, inside the perimeter, than Capt Rainville thought they would be. This is significant, because when Capt Rainville claims that he called for Detachment 63 to move north to sandwich the Somalis, he believed they would come from the south as he approached from the north. What actually happened, however, is that the Somalis were just even with or slightly north of the location of Detachment 63, making a sandwich manoeuvre impossible.

When Mr. Abdi and Mr. Aruush rounded the south-west corner of the Engineers perimeter, they were picked up by Detachments 63 and 69, who observed them as they stopped at a rock-pile. As with much of the testimony concerning the incident, the existence and location of the rock-pile are not agreed on. A rock-pile was created when the Canadians bulldozed the land to clear the remains of an orphanage,³⁰⁰ and according to Sgt Groves of the Field Squadron of Engineers, it was located 35 to 40 metres from the gate and

75 to 80 metres from the south-west corner of the compound.³⁰¹ It was at the rock-pile that Sgt Groves conducted range practice with 12-gauge shotguns on the afternoon of March 4th.

Sgt Plante does not recall a rock-pile.³⁰² Cpl King also does not remember seeing a rock-pile,³⁰³ but this is because his area of responsibility was to the west and south-west once Detachment 63 was set up behind the well.³⁰⁴ Cpl Favaroli recalls the rock-pile quite clearly, as it was one of two reference points he used to orient himself regarding the location of Detachment 63.³⁰⁵ According to Cpl Favaroli, the rock-pile was within 20 to 25 metres of the south-west corner of the Engineers perimeter and 20 to 25 metres south of the well.³⁰⁶ Cpl Klick agrees with the general location as described by Cpl Favaroli, but puts it perhaps 30 to 50 metres from the corner of the perimeter (see Annex A).

We have concluded that the Somalis did not breach the wire at the Helicopter compound, that they did not come anywhere close to it, and that if they approached the wire anywhere, it was probably very close to the gate.³⁰⁷ When the Somalis left the rock-pile and began to move north once again, they were quite close to Detachment 63. Thus, when Capt Rainville radioed Detachment 63 to move north to intercept the intruders,³⁰⁸ Cpl Favaroli quickly responded, "63 — Wait — Out", hoping to avoid compromising their position.³⁰⁹ Cpl Favaroli's quick response also explains why Sgt Plante has no memory of Capt Rainville's instruction to move north; Sgt Plante was focused on watching the Somalis, who were approaching his position.³¹⁰

The testimony dealing with what caused the Somalis to flee is complex and full of contradictions. This is the crux of the incident, so we must determine what the Somalis were doing when they were challenged by the Recce patrol, and we must determine what the Recce patrol did when they challenged the Somalis. There are essentially four relevant versions of this series of events, and we must sort them out to come to a conclusion about which of them is valid.

According to Capt Rainville, he dismounted from the truck and approached the Somalis as they headed toward the Helicopter compound; it was his approach while they were attempting to penetrate the wire that startled the Somalis and caused them to flee. He states that as they began to flee, he gave a verbal warning and shouted "Get them" to Detachment 63, then began his pursuit.³¹¹

Cpl Klick's version differs from Capt Rainville's, in that Cpl Klick says the Somalis passed just north of the gate, then Capt Rainville left the truck and went toward the gate, not the Helicopter compound.³¹² Two minutes later, Cpl Klick heard a rattle like the sound of concertina wire being dragged. He assumed Capt Rainville had opened the gate to go after the Somalis. Then

Cpl Klick heard Capt Rainville shout “Get them”, followed closely by warnings in English, French and Somali from Detachment 63, followed by shots.³¹³ What made the Somalis flee in Cpl Klick’s version was the dragging of the concertina wire as Capt Rainville opened the gate.

This differs considerably from the version of Sgt Plante, who says he heard a sheet-metal noise, as if someone had stepped on the hood of a truck³¹⁴ (he would not have mistaken this for the dragging of concertina wire³¹⁵), and this sound set in motion the series of events ending with the shooting.

However, Cpl Favaroli’s recollection is that the radio call, which came when the Somalis were within 20 to 25 metres of Detachment 63, may have startled the Somalis, because very soon after this Sgt Plante stood up, shone a flashlight in their faces, and said halt, twice, before firing a warning shot with his shotgun.³¹⁶ When reminded of his interview with the Military Police on June 17, 1993, in which he said that a sound from the radio made the Somalis run, and that this was also Cpl Favaroli’s testimony, Sgt Plante conceded that this was possible.³¹⁷

Capt Rainville’s order to “Get them” came, according to Cpl Favaroli, after Sgt Plante and Cpl King fired warning shots while the Somalis fled.³¹⁸ Sgt Plante stated, though, that he did not turn on his flashlight and give the verbal warning until he heard Capt Rainville say “Get them”; otherwise he would have let the Somalis go.³¹⁹

There are problems with Sgt Plante’s testimony, as we saw earlier in our discussion of the alleged breach of the wire. It is difficult to reconstruct the sequence of events from Sgt Plante’s testimony, because the Somalis clearly could not have passed him going north, then started running to the south before he stepped up and shone his flashlight. Sgt Plante’s contention — that while the Somalis were running south from the Helicopter compound he set aside the radio handset and told Cpl King and Cpl Favaroli to get ready³²⁰ — is not supported by the testimony of the two corporals.³²¹

As for where Sgt Plante was aiming when he prepared to challenge the Somalis, Cpl King testified that he was not watching, while Cpl Favaroli testified that Sgt Plante never turned to the north and that he heard Capt Rainville shout “Get them” only after Sgt Plante and Cpl King had already fired warning shots and were pursuing the Somalis, who continued to flee.³²² Sgt Plante did not mention hearing “Get them” in his statement to the Military Police, nor did he mention the sheet metal noise or the bait.³²³

It seems clear to us that Sgt Plante acted on orders received at the orders group and fired to prevent the escape of the Somalis, not for any other reason. Cpl King simply followed his lead, while Cpl Favaroli did not fire his weapon. Thus it was not because of a sense of threat or a hostile act that Sgt Plante fired, but rather to accomplish the mission of capturing the Somalis, as he

admitted in his testimony.³²⁴ Had he not fired, they would most likely have escaped, resulting in the failure of the mission.³²⁵

There is little dispute about what happened when Sgt Plante and Cpl King fired their weapons. Cpl King missed, but Sgt Plante hit Mr. Abdi in the buttocks and subsequently restrained him with plastic cuffs. Capt Rainville joined Detachment 63 at the location of Mr. Abdi. Cpl Favasoli then spotted Mr. Aruush with his night-vision goggles and pointed him out to Sgt Plante and Cpl King, so that they could attempt to apprehend him. There is disagreement on whether Mr. Abdi was searched right away, as Capt Rainville insists he was.³²⁶ All members of Detachment 63 state that he was not searched until they returned to assist Capt Rainville in subduing Mr. Abdi, who had begun to wriggle out of the plastic cuffs.³²⁷ Cpl Favasoli, who confiscated a knife from Mr. Abdi and kept it for two months (until asked for it by the Military Police), stated that he removed the knife after Detachment 63 broke off the chase and returned to where Capt Rainville was watching Mr. Abdi.³²⁸

Sgt Plante and Cpl King maintained the chase under Cpl Favasoli's direction until Mr. Aruush ran into the area of responsibility of Detachment 64A. The salient point here is that Detachment 63 gave up the chase not in resignation that Mr. Aruush would get away, but because it was beyond doubt that Detachment 64A would apprehend him with little or no trouble, as they could see Mr. Aruush running straight toward them. This is what Sgt Plante assumed, based on the fact that his flashlight was on the whole time; he therefore saw no need to warn Detachment 64A of Mr. Aruush's approach.³²⁹ The same applies to Cpl Favasoli, who said he had no difficulty seeing with the naked eye and would have been astonished if Detachment 64A did not see Mr. Aruush running toward them.³³⁰

Two critical elements of the shooting by Detachment 63 established the circumstances under which Mr. Aruush lost his life. First, no hostile act precipitated the Canadian troops opening fire. LCol Mathieu himself agreed that the Somalis should have been allowed to continue to flee; if they had been allowed to flee, the shootings would not have happened.³³¹ Second, in our view, it was the instruction, given during the Recce Platoon orders group, that the purpose of the mission was to capture Somalis who attempted to breach the perimeter, using whatever force was necessary, that resulted in the shootings.

Significantly, we are satisfied that Mr. Abdi and Mr. Aruush did not penetrate the wire at any of the Canadian compounds, nor, we think, did they even get the opportunity to do so; they were scared off before they had the chance. But having approached as close as they did, the Canadian troops were not about to let them get away, so Sgt Plante opened fire with the intent to wound and subsequently capture. This decision heightened the state of readiness of the men of Detachment 64A. The fact that they were not armed with 12-gauge shotguns made the death of Mr. Aruush more likely.

The Circumstances of the Shooting by Detachment 64A

The basic sequence of events leading to the death of Mr. Aruush is not in dispute. After Mr. Abdi was wounded, Cpl Favaroli spotted Mr. Aruush some distance south-east of their position and directed Sgt Plante and Cpl King in pursuit of him. Mr. Aruush fled in an easterly direction, toward Detachment 64A. At the mid-point of the south wire of the Engineers compound, Detachment 63 discontinued the chase when they saw that Mr. Aruush had entered Detachment 64A's area of responsibility. Capt Rainville warned Detachment 64A that Mr. Aruush was coming their way and that they should "Get him". When Mr. Aruush was challenged orally by Detachment 64A, he shifted direction, trying to veer away from their position. Leaving his weapon behind, Cpl Smetaniuk ran out after Mr. Aruush. Cpl Roch Leclerc fired a single warning shot. Then MCpl Countway and Cpl Leclerc dropped to their knees, and each fired an aimed shot at Mr. Aruush. The man went down with the first volley but tried to get back up. Then MCpl Countway and Cpl Leclerc fired a second volley, which killed Mr. Aruush.

Despite agreement on this basic sequence of events, other aspects of the incident were the subject of conflicting evidence. There are significant discrepancies and conflicts in the evidence concerning the path of Mr. Aruush's flight from Detachment 63 and his attempted flight from Detachment 64A. All members of Detachment 64A say that Mr. Aruush fled in a generally south-easterly direction, starting out reasonably close to the south-west corner of the Engineers compound and moving further from the wire as he headed east. Sgt Plante and especially Cpl Klick recall Mr. Aruush running closer to the south perimeter of the Engineers compound. Cpl Klick testified that Mr. Aruush stopped about one or two metres from the south-west corner of the wire to look back to where Detachment 63 had gathered around Mr. Abdi. Cpl Klick thought the man was running more or less parallel to the south wire and about 20 metres away from it.³³² Cpl Favaroli, however, recalled sighting Mr. Aruush with his night-vision goggles about 150 metres south of the Engineers compound, then later seeing him further east and about 50 metres north, suggesting a northeasterly path.³³³ (See Annex I.)

After Detachment 63 discontinued their pursuit of Mr. Aruush, they turned back west to rejoin Capt Rainville, who had remained with Mr. Abdi, so the members of Detachment 63 did not see what Mr. Aruush did in response to Detachment 64A's challenge. All three members of Detachment 64A, as well as Cpl Klick, testified that they saw Mr. Aruush veer south in response to Detachment 64A's challenge. The only variation was in MCpl Countway's

testimony. He said that Mr. Aruush ran in a zig-zag fashion, constantly changing direction.³³⁴ All members of Detachment 64A recall that Cpl Smetaniuk ran toward the south in his attempt to intercept Mr. Aruush (see Annex K).

There is conflicting evidence about where Mr. Aruush lay after being shot. All members of the Recce patrol who saw the location of the body recalled it being south or south-east of Detachment 64A's position. But other compelling evidence from non-Recce patrol witnesses who were more familiar with that part of the Canadian encampment indicated that Mr. Aruush's body was located north of Detachment 64A's reported location, much closer to the south-east corner of the Engineers compound, and not more than 30 metres south-east of the south-east corner of the Engineers compound. (This point is discussed in greater detail later in the chapter.)

Those involved in the shooting have offered various justifications and excuses, as have their superiors in the chain of command on their behalf. However, we believe that, like the shooting by Detachment 63, the evidence leads to the conclusion that the shooting of Mr. Aruush was motivated purely by the goal of completing the mission by preventing his escape, not by the need to respond to a threat.

Further, LCol Mathieu admitted in his testimony that if the Recce patrol had been adhering strictly to the Rules of Engagement, the fact that the Somalis had not shot at patrol members should have led Capt Rainville to tell Detachment 64A, "Let him go", not "Get him".³³⁵

Capt Rainville admitted that, during his orders group, he had told patrol members that they could use deadly force if necessary to prevent an intruder from escaping. To Capt Rainville, shooting to prevent flight amounted to the same thing as physically apprehending someone.³³⁶ This guidance on the application of the Rules of Engagement was understood clearly by patrol members. This is demonstrated most clearly by the fact that they saw the use of deadly force as necessary to prevent the Somalis escaping, not because they felt threatened.³³⁷

The members of Detachment 64A heard yelling and then shooting from Detachment 63.³³⁸ Cpl Leclerc claims to have heard a radio message from Capt Rainville to Detachment 63 indicating that the Somalis were trying to go under the wire,³³⁹ but Capt Rainville made no such transmission. When Capt Rainville left the truck, he left the radio behind.³⁴⁰ MCpl Countway testified that he believed that the Somalis had committed a hostile act.³⁴¹ But he has no credible explanation for this belief other than the radio transmission referred to by Cpl Leclerc.

MCpl Countway also said he did not know who was shooting — the Somalis, the Canadians, or both — and that this contributed to a fear for Cpl Smetaniuk's safety as he ran out to intercept Mr. Aruush.³⁴² But this rationalization makes no sense for a number of reasons.

Concern about Cpl Smetaniuk's safety was not mentioned by anyone in their initial statements to Capt Hope.³⁴³ Further, if the Somalis had been shooting, Cpl Klick would have engaged Mr. Aruush as he fled through the sniper's arcs of fire. But Cpl Klick did not engage Mr. Aruush, even though he knew he was heading toward Detachment 64A's location, because he saw no evidence that Mr. Aruush was preparing to use a weapon.³⁴⁴ Moreover, all members of Detachment 64A agreed that they would have expected Capt Rainville or Detachment 63 to radio them if the Somalis had displayed or used weapons;³⁴⁵ indeed, any other expectation is simply not believable.

Detachment 64A heard Capt Rainville shouting that the second Somali was heading their way and that they should get him.³⁴⁶ Obviously, if Mr. Aruush had been armed, Capt Rainville would have said so at this point. Moreover, Cpl Leclerc testified that he took Capt Rainville's message to mean that they should intercept the Somali, not kill him.³⁴⁷ This interpretation tends to suggest a realization that the Somalis had not shot at anyone. Had there been any significant doubt or concern at Detachment 64A about the threat posed by Mr. Aruush, they could have used the radio to get more information, but they did not.³⁴⁸ Furthermore, by all accounts, Mr. Aruush immediately changed direction and veered away from Detachment 64A in response to their challenge,³⁴⁹ which he would not have done if he intended to harm them.

The most telling indication that Detachment 64A did not fear return fire from Mr. Aruush is that Cpl Smetaniuk took it upon himself, or was ordered by MCpl Countway, to run after and intercept Mr. Aruush.³⁵⁰ Cpl Smetaniuk left his weapon behind when he did this, and no one told him to come back and get it or to discontinue his efforts. No reprimand was ever given for Cpl Smetaniuk's unarmed pursuit of Mr. Aruush.³⁵¹

Even when MCpl Countway and Cpl Leclerc decided to shoot, neither of them told Cpl Smetaniuk to cease his pursuit; Cpl Leclerc simply told him that they were going to shoot.³⁵² If there had been any real concern that Mr. Aruush was armed, surely Cpl Leclerc and/or MCpl Countway would have told Cpl Smetaniuk to get down or come back, anticipating that Mr. Aruush might return fire if they missed or merely wounded him. Clearly, the only concern was Cpl Smetaniuk's safety in relation to shots from MCpl Countway and Cpl Leclerc,³⁵³ and that was certainly Cpl Smetaniuk's only fear at the time. Cpl Smetaniuk testified that he heard his colleagues say something, then he heard a shot. He says he assumed they were commencing the escalation pursuant to the Rules of Engagement, so he dropped to the ground to get out of the way.³⁵⁴ Afterward, Cpl Smetaniuk was quite shaken by the events.³⁵⁵

Finally, there is the admitted fact, confirmed by the medical evidence, that MCpl Countway and Cpl Leclerc shot Mr. Aruush in the back as he was running away from their position. No logical reason was given for the second, fatal volley of shots. MCpl Countway and Cpl Leclerc admit that they did

not feel threatened, that Mr. Aruush was just getting up and had not resumed his flight or done anything else. No further warning was given before they fired again. Cpl Leclerc testified that he fired the second time out of reflex and that there was no threat.³⁵⁶ We believe that it is clear, based on the sum of the evidence, that the members of Detachment 64A who shot Mr. Aruush did so as a means of capturing him rather than as a result of a perceived threat.

MCpl Countway and Cpl Leclerc say that Mr. Aruush began to get up and had pulled himself into a runner's crouch when they dropped to their knees and fired again. They say that they were about 50 metres from Mr. Aruush when they fired.³⁵⁷ The crucial difference between the fate of Mr. Aruush and that of Mr. Abdi was that Detachment 64A was armed only with C7 rifles, while Sgt Plante had a 12-gauge shotgun. When Sgt Plante opened fire, the spray pattern of the shot resulted in the wounding of Mr. Abdi, whereas the men in Detachment 64A had little option but to fire at the centre of visible mass, as they had been trained to do. Thus the chance that their shots would be fatal was much greater than when Sgt Plante fired.

We heard evidence of statements by witnesses suggesting that when Mr. Aruush was shot the second time, he was shot at close range. Cpl Dostie and Cpl Martin Leclerc were in the Service Commando observation tower at the time of the shooting. Cpl Martin Leclerc was looking through night-vision goggles. According to Cpl Dostie, after they heard the second volley of shots from Detachment 64A, Cpl Martin Leclerc said to him that the soldiers had shot the intruder at "point blank" range; to Cpl Dostie, this meant five to ten feet.³⁵⁸

Cpl Martin Leclerc denied saying this to Cpl Dostie.³⁵⁹ However, Cpl Martin Leclerc apparently had difficulty remembering a number of things about the incident, so we find it difficult to believe that he could be so categorical about not telling Cpl Dostie that the patrol members had shot Mr. Aruush at "point blank" range. Cpl Dostie, on the other hand, has nothing to gain by lying about what Cpl Martin Leclerc said to him that night, and Cpl Dostie did not volunteer to testify,³⁶⁰ which would suggest that he has no particular axe to grind.

Cpl Dostie's recollection is supported by Cpl Chabot. According to Cpl Chabot, Cpl Roch Leclerc indicated to him that Mr. Aruush was "close" when he was fatally shot; Cpl Chabot interpreted this as anywhere between 10 and 25 metres.³⁶¹ Cpl Roch Leclerc admits that he told Cpl Chabot after the shooting that he was "close" when he fired, but says that he considers 50 metres close range.³⁶²

The medical evidence is somewhat conflicting, particularly as it relates to interpreting the more immediately fatal wounds to the neck and head. Maj Armstrong was the surgeon on duty at the Unit Medical Services, where both shooting victims were taken. In the case of Mr. Aruush, Maj Armstrong

noted a 2 by 3 centimetre wound in the upper belly area with a significant amount of protruding omentum (abdominal tissue). He also noted a large wound on the left side of the neck and on the right side of the neck extending into the right facial area. Smaller wounds were found in the back: one (approximately 7 to 10 millimetres in diameter) was in the central back area just to the right of the spine; another was in the posterior shoulder area near the juncture of the left shoulder blade and the collar bone. There was another small wound in the middle of the anterior base of the neck³⁶³ (see Medical Annex A).

As part of the Military Police investigation in April 1993, Dr. James Ferris, then head of forensic pathology at Vancouver General Hospital and a professor of forensic pathology at the University of British Columbia, conducted an autopsy on Mr. Aruush. Although there had been considerable decomposition of the remains by this time, Dr. Ferris described the presence of wounds similar to those described by Maj Armstrong.³⁶⁴ (See Medical Annex B.)

Both agree that the wound in the central back is an entrance wound that connects with the abdominal wound and that Mr. Aruush was therefore shot in the back at least once.³⁶⁵ However, Dr. Ferris and Maj Armstrong otherwise tended to differ in their interpretations of the wounds, especially in the hypotheses about the shooting that each derived from interpreting the wounds.

Maj Armstrong's hypothesis was that the victim had been shot from the back through the abdomen and was then finished off a few minutes later by shots to the head and neck.³⁶⁶ Dr. Ferris concluded that Mr. Aruush was hit with only two bullets, both fired from the rear: one bullet that passed through the back and abdomen in a slightly right to left trajectory; and a second, which caused all remaining wounds, that passed from left to right, through the left shoulder from the left rear and then through the neck, exiting through the right side of the neck and face.³⁶⁷ This interpretation is basically consistent with the evidence of MCpl Countway and Cpl Roch Leclerc. However, as Capt (N) Blair of the Judge Advocate General's office wrote in a situation report to senior management at NDHQ on May 6, 1993, the forensics and ballistics team could not comment on the events of the night, but could only issue very narrowly focused comments on the condition of the body as they found it six weeks after the shooting.³⁶⁸ In effect, the fact that the remains were almost completely skeletonized limits the usefulness of Dr. Ferris's conclusions, which means that Maj Armstrong's hypothesis cannot be ruled out.

Maj Armstrong based his hypothesis on the following factors. He thought that the amount of omentum protruding from the abdominal wound suggested that the victim had been alive and breathing for some minutes after the shooting. Maj Armstrong also believed that the wound in the lower front of the neck (which is evident in photographs taken the night of March 4th)

was an entrance wound associated with the exit wounds on the neck and head. He thought that the angle thereby indicated for the fatal wounds suggested that the victim had been lying on his back when he was shot, by someone from the front, standing above the victim.³⁶⁹ Maj Armstrong found further support for his theory in the fact that he saw no dirt on Mr. Aruush's face or on the protruding omentum when he examined the body shortly after the shooting.³⁷⁰

Dr. Ferris, on the other hand, stated that, in his opinion, abdominal contents can be extruded from a gunshot wound as a victim is dying or even after death, so evidence of this would not necessarily indicate that the victim had remained alive for two or three minutes after sustaining the first wound. With respect to the wound near the base of the front of the neck, Dr. Ferris believes that this was caused by an exiting bullet or bone fragment.³⁷¹ On May 7, 1993, a forensic team conference was held in Ottawa; it concluded that the findings in Dr. Ferris's report were tenuous except for those relating to the number and sequence of bullet wounds.³⁷² For this reason, we are not able either to endorse or to rule out Maj Armstrong's hypothesis.

While Maj Armstrong had the advantage of examining the body right after the shooting, Dr. Ferris is a more qualified expert and was examining the remains for the express purpose of determining the nature and the pattern of the wounds. The available medical evidence is thus inconclusive on the question of the range at which the immediately fatal wounds were inflicted. Nevertheless, the statements of Cpl Martin Leclerc and Cpl Roch Leclerc, as related by Cpl Dostie and Cpl Chabot, indicate that the shooters were close enough to their target for this to be an aspect of the incident they considered worth mentioning to others.

In our view, the evidence with regard to the circumstances of the shooting by Detachment 64A leads to the conclusion that Mr. Aruush posed no threat and that detachment members fired only to complete their mission. There was no danger to Cpl Smetaniuk, other than the possibility of being shot accidentally by MCpl Countway or Cpl Roch Leclerc. If there had been, he would never have chased Mr. Aruush without a weapon. If the situation had been genuinely dangerous, MCpl Countway would have ordered Cpl Smetaniuk not to leave cover, or called him back shortly after he ran out.

It is also clear that the men of Detachment 64A shot Mr. Aruush the second time from close range, likely from a maximum distance of 50 metres. We cannot rule conclusively on the exact distance because there was no physical evidence available for ballistics experts to examine, and the body of Mr. Aruush, when examined by Dr. Ferris, was decomposed beyond the point where determinations of this nature could be made. What is clear, however, is that the justifications provided for shooting Mr. Aruush do not stand up to scrutiny.

The Location of Mr. Aruush's Body

There were significant discrepancies in the testimony regarding the spot where Mr. Aruush fell after being fatally wounded.

Cpl Lalancette, who was following events from his position in the 1 Commando Tower through a night observation device that picks up heat emissions, estimated that Mr. Aruush was lying 10 to 15 metres from the south-east corner of the Engineers compound perimeter.³⁷³

Sgt Groves, commanding the Quick Reaction Force, arrived on the scene soon after the shooting in response to a request for assistance from Capt Rainville.³⁷⁴ He placed the location of the body at 15 to 20 metres south of the Engineers compound perimeter wire.³⁷⁵

Cpl Mountain, the medic accompanying the ambulance, estimated that Mr. Aruush lay about 10 metres from the south-east corner of the Engineers compound.³⁷⁶

The Recce patrol members who were on the scene all claim that the body of Mr. Aruush was significantly further south than the other witnesses estimated. Cpl Favaroli of Detachment 63, who went to the scene of the second shooting after it was over, said that the body was lying about 50 to 100 metres south of the Engineers compound.³⁷⁷ Cpl Klick, the patrol's sniper, did not actually see the body, but he recalls seeing the ambulance 50 to 100 metres south of the Engineers compound when it picked up the body.³⁷⁸ The members of Detachment 64A and Capt Rainville all claim that the body was further south still, between 100 and 175 metres south-east of the south-east corner of the Engineers compound.³⁷⁹ Their average estimate was about 145 metres (see Annex J).

There are also discrepancies in testimony about whether the body was east or west of the south-east corner of the Engineers compound. Sgt Groves, Cpl Klick and Cpl Favaroli indicated a location west of the south-east corner, whereas the other witnesses placed the spot east of that corner.³⁸⁰

WO Marsh inspected the area the morning after the shooting. During this daylight inspection he found a blood-stained area of sand about 25 to 35 metres south-east of the south-east corner of the compound.³⁸¹

Significantly, all Recce patrol members who testified about the location of the body placed it in such a way as to indicate that Mr. Aruush was south of Detachment 64A, so that MCpl Countway and Cpl Roch Leclerc would have been firing away from the Canadian compounds. The evidence of non-Recce patrol witnesses, however, indicates a location that would have had

them firing in a more northerly direction, and thus more in the direction of the Canadian compounds, based on their own evidence about Detachment 64A's location.

The medical evidence is of some assistance in this matter and contradicts the contentions of Detachment 64A members with respect to the victim's location. It seems beyond dispute that, when he was first shot, Mr. Aruush was, or had been, moving in an easterly direction, away from the location where Mr. Abdi had been shot. It is also beyond dispute that the first shot to hit Mr. Aruush struck him in the area of the right rear flank and exited from his left abdominal area. This basic trajectory is consistent in the observations of Maj Armstrong, WO Ashman and Dr. Ferris. This right-to-left/back-to-front trajectory tends to indicate — assuming that Mr. Aruush was facing east, as everyone admits — that Mr. Aruush was north and east of Detachment 64A when first shot. This is the more likely location. Mr. Aruush could also have been north-west of the shooters, provided he was facing in a northerly direction. But he could not have been south of them, running in a south-easterly direction, as they claim.

The Recce patrol members, particularly those in Detachment 64A, would have had an interest in concealing negligence (shooting in the direction of the compounds) or concealing the fact that Mr. Aruush had passed them and was moving away from their position when they shot him. Any such motive would give them an interest in establishing a location for Mr. Aruush's body well south of the location suggested by the evidence of other witnesses.

By the same token, witnesses who were not part of the Recce patrol had no conceivable stake in the location of the body. The evidence of WO Marsh is particularly compelling. Following the shots fired by Detachment 63, WO Marsh came out to the truck, where Cpl Klick was still stationed, and saw flashlights converge near the south-east corner of the Engineers compound. He later returned and inspected the area in daylight and found the spot by locating blood stains in the sand.³⁸² He had no stake in how the shooting occurred and was undoubtedly looking around to understand what had happened the previous night and where. His estimated location of the blood stains is very close to the location for the body given by the other disinterested parties: the medic, Cpl Mountain, and Cpl Lalancette. It is also in the vicinity of Sgt Groves' estimate.

The conclusion we can draw, therefore, is that Mr. Aruush's body was located 20 to 35 metres from and south of the south-east corner of the Engineers compound and that the shots from Detachment 64A were fired in the direction of the Canadian compounds.

Communications Breakdown: Compound Left Unguarded

As we have seen, several elements of the March 4th incident lead to the conclusion that there was no real danger that night, and no threat of sabotage; in fact security was a secondary concern of the Recce patrol. This view is borne out by examining what took place after the shootings. The evidence reveals a communications gap among the patrol members that resulted in a breakdown in the mission chain of command and in the Engineers and Helicopter compounds being left unguarded for long periods during the night of March 4th.

From the events of that night, it appears that command in the field changed hands, or should have changed hands, at least three times. After the wounded man, Mr. Abdi, was taken to the hospital in an ambulance by Sgt Plante and Cpl King between 20:20 hours (8:20 p.m.) and 20:41 hours, Capt Rainville went with Cpl Favasoli to the location of Mr. Aruush's body. Capt Rainville then accompanied the body to the hospital at 20:51 hours.³⁸³ At 21:13 hours he called for CWO Jackson and the U.S. interpreter to interview Mr. Abdi.³⁸⁴

Sgt Plante and Detachment 63 reformed in the Service Commando compound and returned to their position at the well, some two hours after leaving the field with Mr. Abdi.³⁸⁵ Capt Rainville went to the Headquarters compound to provide a debriefing to Col Labb  , LCol Mathieu, and Capt Kyle. Following this debriefing, Capt Rainville called the members of Detachment 64A into the Engineers compound to provide more information to CWO Jackson for his report at 23:00 hours.³⁸⁶ This debriefing lasted approximately 30 minutes, after which Detachment 64A returned to their position in the field.³⁸⁷

There are several important points here. There was no communication with regard to a change in command while Capt Rainville was out of the field, or while Sgt Plante was at the hospital with Mr. Abdi. Officially, command should have passed from Capt Rainville to Sgt Plante to MCpl Countway, back to Sgt Plante, then back to Capt Rainville. This did not occur — a fairly serious breakdown in the chain of command. The result is that Capt Rainville retained effective command of the mission while out of the field for at least three hours and did not pass command to either of his subordinate detachment commanders.

Further, the entire time that Detachment 63 was out of the field, some two hours in total, the west side of the Engineers compound and the south side of the Helicopter compound remained completely undefended.³⁸⁸ The same can be said for the period when Detachment 64A went to the Engineers compound to debrief CWO Jackson: the entire east and south sides of the Engineers compound remained undefended for the 60 to 90 minutes it took Detachment 64A to go inside, make their report, and return to their position.³⁸⁹

It is difficult to believe that if there had been any real danger to the Engineers compound or the Helicopter compound, Capt Rainville would have proceeded in this manner. The only conclusion we can draw is that there was no real danger of any attack or sabotage at the Engineers and Helicopter compounds that night, and that the real priority was capturing intruders and reporting that fact up the chain of command. Otherwise, precautions undoubtedly would have been taken to establish effective command in the field and to send replacement troops into the field while the detachments were called away to accompany the prisoner or to report.

The Case of Beer Comment

During our hearings we explored the rumour that Capt Rainville had allegedly promised to buy a case of beer if the men shot a Somali on the night of March 4th, to determine whether there was any basis for it. Sgt Plante, Cpl Favaroli, Cpl Roch Leclerc, and Cpl Smetaniuk of Recce Platoon recall hearing Capt Rainville make a promise that the men would have beer after the mission; this may have left the men with an inappropriate impression of why they were on patrol that night.

There are discrepancies in the testimony about how the subject was raised. Sgt Plante, Cpl Favaroli and Cpl Smetaniuk recall Capt Rainville making the offer, but cannot say with certainty exactly how the issue came up. Cpl Roch Leclerc and Capt Rainville suggest that the comment he made was in response to a remark made at the orders group preceding the mission. During the orders group, Cpl Roch Leclerc heard Cpl Smetaniuk make a comment to the effect that since they would be out all night, they would not be able to have their allotment of beer for the day.³⁹⁰ Capt Rainville testified that his response to this comment was what prompted the rumour that he wanted a Somali shot that night. According to Cpl Smetaniuk, Capt Rainville said something to the effect that if they had to shoot that night, he would buy a "6-pack for a wound, and a 24 for a kill".³⁹¹ He accompanied this comment, Cpl Favaroli said, with the observation that in the event of danger that night, it would be "better to be judged by 12 than carried by 6". The soldiers found this remark offensive at first, but afterward Cpl Favaroli took it to be an expression of gallows humour to the effect that if they were able to cheat the grim reaper, that it would be cause for celebration.³⁹² Capt Rainville also indicated in his testimony that he was much more comfortable appearing before us to explain that sort of comment than he would have been writing a letter home to the parents if any of his men had been killed.³⁹³

There is far from widespread agreement concerning exactly what words Capt Rainville used that night, but there is general agreement that the subject of having beer after the mission did come up,³⁹⁴ and Capt Rainville himself

admits this. Capt Rainville stated in his testimony that he made a flip remark in answer to another soldier's remark that they would have a beer after the mission (this would not have been abnormal), but he denies promising to buy a case if they shot any Somalis.³⁹⁵

The significance of this issue is that the subject of having a beer did come up between Capt Rainville and his men, and that it was discussed inappropriately in the context of an orders group before they went out on patrol. What was actually said is likely never to be resolved. The case of beer comment may not have amounted to an offer of a reward for the killing of a Somali. It may have had no impact whatsoever on the subsequent events. However it was meant, the comment was clearly inconsistent with respect for the lawful conduct of operations, and it had the serious potential to mislead impressionable soldiers.

THE SUMMARY INVESTIGATION

The Commanding Officer of the Canadian Airborne Regiment Battle Group, LCol Carol Mathieu, was directed by Col Serge Labb  , Commander Canadian Joint Force Somalia, to conduct a CO's investigation of the March 4th incident to determine whether the shootings had been justified under the Rules of Engagement. On March 5, 1993, LCol Mathieu therefore appointed his Intelligence Officer, Capt Hope, to conduct the investigation. At first glance, this might appear appropriate, but as we will demonstrate, the result was a series of deficiencies in the investigation. To assess the impact of Capt Hope's report on events following March 4th, we examine the report from the following perspectives: the choice of Capt Hope as investigator; the type of investigation conducted by Capt Hope; what was not done; the changes to and deficiencies in the report; and the consequences of the summary investigation. Then we show that the investigation set the stage for a cover-up of the March 4th incident that ultimately involved National Defence Headquarters (NDHQ).

The Choice of Captain Hope as Investigator

Under certain conditions, the decision to conduct a CO's investigation following a shooting incident could be seen as correct. As Col Wells, the Director General Security at NDHQ, testified, this is the correct procedure when there is no immediate suspicion of a crime or a service offence.³⁹⁶ The procedure is intended to provide a superficial examination of events to determine what to do next. The decision to proceed with a CO's investigation of

the March 4th incident was highly questionable in our view: there was a suspicious death, there was serious and immediate concern at NDHQ that excessive force had been used, and there was a serious and immediate allegation by a senior medical officer that the victim had been dispatched or executed. Notwithstanding these circumstances, LCol Mathieu designated Capt Hope as his investigator. Capt Hope was to have a quick look at the events and report back within 48 hours, either orally or with a brief written report.

However, as Capt Hope testified, he had never conducted a CO's investigation before and did not know what procedure to follow. Capt Hope searched through the *Queen's Regulations and Orders* (QR&O) and Canadian Forces Administrative Orders (CFAO) in vain, looking for guidance. He found none, because there was none to find. He therefore determined that he would conduct a summary investigation as described in the CFAO, having had some experience with this type of investigation.³⁹⁷ He did not consider whether this was the appropriate type of investigation, but rather chose this route in an attempt to meet the stringent deadline.

Capt Hope went about his task without the slightest critical analysis of the statements he collected from Recce patrol members. He admitted that he accepted the statements he was given at face value and did not subject them to critical analysis or comparison. He simply clarified and corrected the grammar of the soldiers' statements.³⁹⁸

The most significant problem in appointing Capt Hope as the investigator was his admitted lack of objectivity. Capt Hope admits he was a poor choice for several reasons: being a member of the unit involved in the incident, he ended up investigating an officer of equal rank with whom he lived in close proximity;³⁹⁹ having been assigned the task by his Commanding Officer, it was difficult for him to go about investigating his CO, who was technically involved in the incident because he was in the chain of command and had been debriefed by Capt Rainville shortly after the incident;⁴⁰⁰ he did not feel qualified to investigate an incident of a possible criminal nature;⁴⁰¹ and other officers were available to undertake this task who were not members of the unit but who were in close proximity at the time. For example, the 427 Helicopter Squadron had begun to arrive on March 5th, or someone could have been brought in from Mogadishu.⁴⁰² Essentially, then, Capt Hope was not free of "the real and apparent authority of those person[s] who may be implicated by his findings"⁴⁰³ and thus could not be seen to be conducting an independent investigation.

Capt Hope requested a medical report from the medical platoon. Maj Armstrong complied, and Capt Hope received the report at approximately 16:00 hours on March 6th. Having found no indication of wrongdoing up to this point, Capt Hope was surprised and alarmed by Maj Armstrong's allegation

that Mr. Aruush had been “dispatched”. He alerted LCol Mathieu to the contents of the medical report and the seriousness of the allegation and waited for further instructions, which he did not receive.⁴⁰⁴

Capt Hope claims not to have dismissed Maj Armstrong’s allegations, but his report does not even mention them, let alone deal with them, and his testimony before us is instructive in this regard. He asserted that he had reason to doubt Maj Armstrong’s credibility because of two previous incidents: a disagreement between them that had occurred in the Petawawa Officers’ Mess; and a perceived lack of judgement on Maj Armstrong’s part in distributing medical supplies in the town of Belet Huen without a platoon security escort.⁴⁰⁵ Capt Hope thus weighed the statement of a man he admitted he did not trust against the statements of men he lived with, had been on patrol with, and trusted. Capt Hope testified that he felt Maj Armstrong had a chip on his shoulder with regard to the Airborne, so he disregarded Maj Armstrong’s allegations entirely.⁴⁰⁶

In addition, he disregarded Maj Armstrong’s medical report because, he said, Maj Armstrong had not been a witness to the events. Yet he accepted uncritically Capt Rainville’s statement about events he did not witness directly. During his testimony he had no adequate response when it was pointed out that coroners’ reports and other medical assessments are invariably made by people who did not witness the events leading to the death. Capt Hope also included in his report several statements conveying his own interpretation of events he did not witness.⁴⁰⁷ Thus there appears to be inconsistency in the way evidence provided by various experts and witnesses was treated. Without knowing what Maj Armstrong’s qualifications were, Capt Hope stated that he thought Maj Armstrong was acting outside his area of expertise and therefore did not treat his report as being that of an expert.⁴⁰⁸

On the whole, then, Capt Hope was an inappropriate choice as investigator because of his lack of experience investigating incidents of a possible criminal nature and his status as a member of the unit, which gave him an overwhelming bias in favour of Capt Rainville and his men. His bias toward the Recce Platoon was compounded by his unfavourable bias toward Maj Armstrong. The investigation was thus hopelessly flawed from the outset and resulted in a report that served only to justify the actions of the Recce Platoon, rather than elucidate the events of March 4th.

The Type of Investigation

Capt Hope had never conducted a CO’s investigation and had no idea how to carry it out. With the assistance of the chief clerk of the regiment, he sought guidance through the QR&O and CFAO, but they could find nothing relating to a CO’s investigation. Capt Hope brought this to LCol Mathieu’s

attention, indicating that he could use the guidelines for a summary investigation instead. He was familiar with this type of investigation, having conducted many investigations into lost equipment, as well as two incidents in which there were injuries during exercises.⁴⁰⁹ LCol Mathieu assented to this approach, and the adjutant, Capt Yuzichuk, was to provide Capt Hope with terms of reference for a summary investigation.⁴¹⁰

There were problems with this decision, however. CFAO 21-9 governing summary investigations stipulates several conditions under which a summary investigation is to be carried out,⁴¹¹ very few of which were adhered to in the case of Capt Hope's investigation. The investigating officer is supposed to receive a complete briefing on what is known about the circumstances of the incident, but this was not done for Capt Hope. He did not know what the Recce Platoon's mission was that night; he did not know how it had been arranged; he did not know that it was unusual for the Recce Platoon to be performing a security operation on a compound other than Headquarters compound; there was no mention of potential sabotage; he was not told about the supplies of food and water put out as bait; he was not told that Capt Rainville had been offered a light tower and a surveillance tower by WO Marsh of the Engineers or that he had refused; he was not told that Capt Rainville had debriefed Col Labb   and LCol Mathieu right after the mission; he did not know that CWO Jackson of the U.S. Special Forces had been debriefed by the men of Detachment 64A directly after the mission; and he did not know that CWO Jackson had interviewed Mr. Abdi, the wounded Somali.

When he started his investigation on March 5th, Capt Hope did not know of Maj Armstrong's allegations, nor did he know that Maj Armstrong had telephoned Mogadishu and spoken to Maj Parsons at approximately 2:00 a.m. the night of the incident. Finally, he was not told that NDHQ had expressed great concern about the incident.⁴¹² So there was a great deal Capt Hope did not know when he undertook his investigation; he testified that having this information would have greatly altered his approach.

Other directives set out in the CFAO were not observed in the investigation, such as the fact that the investigator is supposed to have separate quarters in which to carry out his investigation and adequate clerical assistance, neither of which was provided. Capt Hope was not entirely freed from his normal duties, as provided for in the guidelines, and he had difficulty obtaining statements from pertinent witnesses. But most significantly, the guidelines call for the investigating officer to be given up to 21 days to carry out the investigation. Capt Hope was initially given 24 hours.⁴¹³ He was later given an extension of one day, then a further extension of four days, but this initial limitation on the scope of the investigation had a significant

impact on the way he approached his task. His terms of reference directed him to interview all available witnesses,⁴¹⁴ but he did not have time to do this. Had he been able to do so, his report might have been substantially different.

If Capt Hope had been allowed to follow the guidelines for a summary investigation more closely, the incident might have received a more thorough examination, and Capt Hope might have recommended further investigation by the Military Police. As it turned out, however, the summary investigation he conducted was wholly inadequate, in relation to both the guidelines in the CFAO and the terms of reference provided by LCol Mathieu. Capt Hope was not familiar with DND investigative and forensic policies and procedures, and he did not consult anyone trained in these types of investigations.⁴¹⁵ In effect, he did not conduct an investigation, but rather a collection of information. Capt Hope admits that his report was a summary of the information he was able to collect, not a critical evaluation of the incident.⁴¹⁶ Finally, as the Military Police report indicates, Capt Hope's investigation did not conform to Canadian standards and practices relating to the investigation of a suspicious death.⁴¹⁷ In retrospect, Capt Hope himself believes that this was not the appropriate type of investigation to conduct in the circumstances.

What Was Not Done

Perhaps the most serious challenge facing Capt Hope was a severe lack of time. He had been ordered initially to submit his report within 24 hours and was later given an extension of another 24 hours. As we have seen from what is stipulated in the CFAO, this was not enough time to conduct a thorough investigation. As a consequence he did not do several things, and this was to have a deleterious effect on his report.

Capt Hope did not interview all the available and relevant witnesses,⁴¹⁸ particularly those from the medical platoon, including Maj Armstrong and the two medics who responded to the call for an ambulance, MCpl Peterson and Cpl Mountain. He did not interview Mr. Abdi either. He did not collect or preserve any physical evidence, such as shell casings, bullet fragments, blood pools, or imprints, and he took no photographs of Mr. Aruush's body.⁴¹⁹ No forensic autopsy was conducted, nor were ballistics tests performed.⁴²⁰ Capt Hope also did not interview the Recce Platoon members involved in the incident; rather, he took written statements from them and then clarified their grammar and expression. He did not subject the statements to testing through interviews, nor did he compare the statements to check for inconsistencies or inaccuracies.⁴²¹ He did not get a statement from Capt Kyle and indicated that he did not think Capt Kyle had been involved in the mission. When questioned about this, Capt Hope admitted that as Operations Officer,

Capt Kyle would have been involved in liaison between the Recce Platoon and the Engineers and also would have had something to do with assigning the mission on behalf of LCol Mathieu.⁴²²

Capt Hope stated in testimony that if he had had more time, he would have interviewed more people, but he made no reference to this in his report. In fact, he wrote that he thought he had all the relevant information and had spoken to all the relevant individuals. This explains why the report does not include a list of people Capt Hope was planning to interview but could not because he ran out of time.⁴²³ In addition, while he admitted that it was his responsibility as Intelligence Officer to know what was happening in the camp at Belet Huen, Capt Hope was not aware that Maj Armstrong's concerns about the shootings were not isolated and that many others held similar views. This mistaken impression lasted until well after redeployment to Canada.⁴²⁴ Indeed, immediately after the incident, Maj Brown expressed concern about the shootings.⁴²⁵ Maj Jewer, Officer Commanding the medical platoon, Maj Vanderveer, Officer Commanding Service Commando, and Capt Potvin, the padre, also met with LCol Mathieu to express the general concern then prevalent in camp.⁴²⁶ There is further evidence in Maj Seward's diary that he at least saw it as a "Recce Platoon hunting trip" and was disgusted by it.⁴²⁷ It is clear, then, that the concern Capt Hope considered exclusive to Maj Armstrong was, in fact, fairly widespread in the camp; with sufficient time he might have discovered this fact. As it was, the tight deadline, combined with his presupposition that there were no concerns other than Maj Armstrong's, prevented Capt Hope from bringing these concerns out in his report.

There is also no indication in Capt Hope's report that he dealt with Maj Armstrong's medical report in any way. He stated that he did not know how to handle Maj Armstrong's allegations, so he brought the matter to the attention of LCol Mathieu and did nothing further in this regard. The contents of the medical report, annexed to the main report, were not dealt with in any way in the body of that report. Consequently, important evidence that should have been considered was disregarded without explanation, in violation of the terms of reference, which required a consideration of all available evidence.⁴²⁸

It is beyond doubt that Capt Hope was given an impossible task to complete in an unrealistic time frame. His report was at best preliminary and provisional, and it would have been preferable for the report to be presented as such. In all likelihood, Capt Hope's inexperience as an investigator led to a report that was more conclusive than he, with hindsight, would have preferred in the circumstances. In any event, his report was presented as, and was taken by LCol Mathieu to be, a complete and thorough examination of the incident of March 4th.⁴²⁹ This led to serious problems in the Military Police investigation eventually carried out in April 1993.

The Changes to and Deficiencies in the Report

Having examined the circumstances under which Capt Hope carried out his investigation, we turn now to the report itself. This report is problematic in several ways, some of which relate to the circumstances discussed above, while others concern the way it was written. Once completed, approved by LCol Mathieu, and submitted to Col Labb  , the report was subsequently sent back by Col Labb   for revision, with extremely specific instructions about what information should be taken out and what information should be added. We therefore need to examine the report, the changes brought to it, the findings it contains, and its impact on the overall incident.

Capt Hope's admittedly biased approach to the investigation is apparent in the report in several ways. Right from the beginning, the danger of the situation was exaggerated by a statement that the theft of Canadian ammunition was a primary concern of the Commanding Officer and that all UNITAF contingents had had weapons and ammunition stolen or had been the target of such attempts.⁴³⁰ Yet when questioned on this issue, Capt Hope admitted that he was unaware of any such attempt either being made or being successful at the Canadian camp in Belet Huen.⁴³¹ The danger was exaggerated further in a discussion of the movement of the two Somalis. The report indicates that the caution they exercised in proceeding along the wire is evidence that they might have been armed. A more accurate account would have stated that this could have indicated danger but did not, as the Somalis were unarmed except for a ritual knife, a fact the investigator was well aware of by the time he wrote the report. Instead, the situation was cast in terms that suggested the greatest possible threat.⁴³²

Capt Hope's report also asserts that Mr. Abdi and Mr. Aruush were known thieves, information that was supplied by Somalis who worked as security guards for Canadian installations.⁴³³ Capt Hope testified that this information was gathered and offered by LCol Mathieu's interpreter, Mr. Dihere, in the form of a signed statement. Capt Hope states that he did not solicit the information from Mr. Dihere. Capt Hope cannot explain how Mr. Dihere knew he was conducting an investigation; he simply accepted the information Mr. Dihere offered. No attempt was made to verify the accuracy of the statement, nor was an attempt made to ascertain the legitimacy of the signatures on the statement,⁴³⁴ even though literacy rates among Somalis were known to be relatively low.

The report indicates that the fact that Mr. Abdi and Mr. Aruush did not stop when challenged was suspicious, because "our three months experience in Somalia have clearly shown that people will quickly stop when challenged".⁴³⁵ Capt Hope testified that he believed this statement to be accurate,⁴³⁶ but testimony before us indicated overwhelmingly that the reaction of most

Somalis to being challenged, particularly at night, was to turn immediately and flee. Capt Hope admits that he did not have nearly as much experience as others with roadblocks and similar activities, but without verifying it, he thought the statement was accurate at the time.⁴³⁷

The first version of Capt Hope's report⁴³⁸ follows the statement of Capt Rainville so closely that it gives the impression that Capt Hope did not consider the statements of the other soldiers, although he states that he did.⁴³⁹ He did not compare the statements to detect discrepancies, but he does indicate that he placed more weight on the platoon commander's statement than on those of his men.⁴⁴⁰ This accounts for the fact that when there are differences between Capt Rainville's statement and those of his men, it is Capt Rainville's account that is reflected in the report. Thus, when Capt Hope's report indicates that Cpl Smetaniuk's difficulties with the night-vision goggles caused him to stumble and fall,⁴⁴¹ and when it states that after being hit by the first shot Mr. Aruush got up and continued running,⁴⁴² it is because Capt Hope relied more on the account of Capt Rainville, who was not present, than on the accounts provided by his men.⁴⁴³

This leads to false impressions about the events. Cpl Smetaniuk, for example, states that he went to ground because he heard a warning shot and did not know how far he was from Mr. Aruush.⁴⁴⁴ Similarly, neither MCpl Countway nor Cpl Roch Leclerc stated that Mr. Aruush got up and continued to flee before they fired their second shots. Capt Hope eventually admitted that this was an error in his report.⁴⁴⁵ Thus, by taking Capt Rainville's version of events over the version of the men actually involved, Capt Hope overstated the potential for danger to the soldiers. The result was an overestimation of the threat in order to justify a level of force that would otherwise have been well beyond that permitted under the Rules of Engagement.

Capt Hope's first report apparently did not provide enough information to satisfy Col Labb  , who sent it back with specific instructions about how it should be revised. Capt Hope submitted his report on March 7th, and on March 10th it was returned to him by LCol Mathieu, who indicated what should be changed and what should be added. The instruction to Capt Hope was that there was no problem with his findings, but more detail was required to back them up. This explains why he did not re-open the investigation or examine Maj Armstrong's statement further: there was no requirement to do so.⁴⁴⁶

It was at this point that all serious attempts at investigation can be seen to have ended. There was no indication to Capt Hope of any problem with regard to Maj Armstrong's medical report, annexed to Capt Hope's report, and there was no question about the findings in Capt Hope's report.⁴⁴⁷ The conclusions reached in his cursory investigation were deemed satisfactory; the report

just did not contain quite enough information to support them. Col Labb  therefore provided instructions for Capt Hope about what to add to strengthen his conclusions.

Perhaps the most significant change to Capt Hope's first report was in paragraph 8, which sets out the conditions under which the Somalis were deemed to have committed a hostile act. The first version of his report read as follows:

The policy of shooting at Somalis inside or running away from CDN wire was formulated by LCol Mathieu, CO CDN AB Regt BG on 28 Jan 93 after consultations with, and approval of Comd CJFS, Col Serge Labb ... When informed that thieves *would* be fired at, the elders did not protest, and in fact, most of the leaders voiced their agreement with the proposed security measures...⁴⁴⁸

In the second version of Capt Hope's report, this paragraph is entirely different. There is no mention of the January 28th orders group and no reference to Col Labb  approving LCol Mathieu's clearly stated policy; furthermore, the phrase "thieves would be fired at" had been changed to "could be fired at".⁴⁴⁹ When questioned about this particular change, Capt Hope replied that he did not recall making it.⁴⁵⁰ With regard to the more substantive changes, his instructions came from LCol Mathieu, who received his direction from Col Labb . The direction given to Capt Hope was to remove the reference to the January 28th policy because it was not a new policy and to provide more information about the speed of events, confusion, the conditions at night, and the use of night-vision goggles.⁴⁵¹ Capt Hope did not question the instructions but simply carried them out.⁴⁵²

The explanation for the changes given to Capt Hope by LCol Mathieu was that what LCol Mathieu had said on January 28 was not a change in the Rules of Engagement, but rather a clarification of what had been in place since the beginning of the deployment; it was not a new policy, but a reinforcement of the existing policy. Capt Hope accepted this and removed the mention of January 28th.⁴⁵³ When asked about this, LCol Mathieu stated that at the January 28th orders group he added two steps to the graduated response: the loud cocking of the rifle and shooting to wound, which made the rules more, not less, restrictive,⁴⁵⁴ but this does not seem to have been well understood by those at the orders group. What is important here is that Capt Hope initially understood it to be a new policy but later accepted LCol Mathieu's assertion that Capt Hope had misunderstood what he heard at the orders group. However, the steps added to the graduated response are not as important as LCol Mathieu's direction about conditions that would trigger the response and that it was permissible to begin the graduated response if someone were fleeing the Canadian camp. This is a questionable interpretation of the Rules of Engagement. Capt Hope also removed the reference to Col Labb  in paragraph 8, and this too calls into question the motivation for the change.

It is quite clear that the reference to the January 28th orders was crucial to the findings of the report, as it provided the justification for the use of force against thieves. The inference that can be drawn is that without specific direction from LCol Mathieu and prior authorization from Col Labbé, the response of the Recce Platoon on March 4th was clearly excessive. Only if the soldiers received the order that breaching the wire constituted a hostile act would their actions be justified.⁴⁵⁵

Capt Rainville testified that his understanding from LCol Mathieu was that touching the wire constituted a hostile act, meaning that the graduated response could be initiated, and this is what he passed on to his men.⁴⁵⁶ This would appear to be supported by the message sent from Belet Huen to Mogadishu the morning of March 5th which states, in the section reserved for the CO's comments, "any Somali attempt to breech [sic] the wire and enter the compound must be considered a hostile act. Soldiers under my command have therefore been directed to apply the Rules of Engagement accordingly during these situations."⁴⁵⁷

LCol Mathieu tried to temporize about this message, stating that it had been sent out with an 'ops' number and thus may not have been seen by him.⁴⁵⁸ But Capt Kyle testified that in reports of significant incidents the CO would personally draft the CO's comments.⁴⁵⁹ This is clearly the normal practice, but even if the Operations Officer wrote them, LCol Mathieu would have approved them before the message was sent. This section of LCol Mathieu's message was reproduced almost verbatim in a situation report sent from Mogadishu by Maj Moffat,⁴⁶⁰ and it was of obvious concern to Col Labbé, as the very next day he issued a situation report of his own in which he corrected this misunderstanding by stating that "neither the CO CDN AB REGT BG nor myself have ever interpreted individuals breaching or attempting to breach the perimeter of CF installations in Somalia as a hostile act. The CO has clearly indicated to all his personnel that such an activity constitutes hostile intent."⁴⁶¹

Col Labbé also attempted to deflect responsibility for this error onto staff officers by stating that he "tore a strip" off Maj Moffat for presenting this interpretation from LCol Mathieu's situation report as being the view of both LCol Mathieu and Col Labbé. Col Labbé did not, however, inquire about where Maj Moffat got the information about breaching the wire being a hostile act. He simply told Maj Moffat in no uncertain terms that he was gravely mistaken and undertook to correct the error through another situation report.⁴⁶² Of significance here is the fact that there appears to have been considerable confusion about the Rules of Engagement at the highest levels of both the Canadian Airborne Regiment Battle Group and Canadian Joint Force Somalia.

It is not surprising, then, that Capt Hope's understanding of the Rules of Engagement was flawed and that this would be apparent in his report. His second report states in paragraph 19, under Summary of Findings, that

The failure to halt when challenged in spite of repeated verbal warnings and warning shots all indicate hostile intent.⁴⁶³

This does not reflect what is stated in the field aide-mémoire under hostile intent,⁴⁶⁴ nor does it reflect the concept of disengagement. LCol Mathieu testified before us that since disengagement was not spelled out in the Rules of Engagement, the CARBG was not implementing it. Thus, the policy of disengagement was not emphasized with regard to the application of the graduated response until LCol Mathieu's orders group on March 8th, when he explained it to the officers of the CARBG.⁴⁶⁵ Capt Hope was not at the orders group on March 8th, so this change is not reflected in his second report.⁴⁶⁶

Thus, for Capt Hope, the issue was really more one of response to threat and proportionality than disengagement. This may explain why the potential danger of the circumstances was played up so much more vividly with the changes in paragraph 9, as well as paragraph 13, which discusses the circumstances under which the mission took place. For the response of the Recce Platoon to be justified, there had to be a serious threat.

Capt Hope changed paragraph 9 to convey a greater sense of danger that night. This danger was already overstated in his first report, but the second report went even further, mentioning concerns about the "sabotage of critical equipment, vehicles or aircraft" and stating that all UNITAF contingents had had "weapons and ammo actually stolen, critical equipment damaged or have been the targets of such attempts."⁴⁶⁷ This reference to sabotage colours the threat and provides possible justification for the use of force. As we have seen, however, there is no evidence to support assertions about the threat of sabotage or theft of weapons and ammunition at the Engineers compound. The only example Capt Hope could come up with was the theft of the fuel pump, which we have demonstrated is far from a clear-cut example capable of supporting a sweeping statement about sabotage and the threat to all UNITAF contingents.⁴⁶⁸ Further, as we have seen, if sabotage had been suspected in the loss of the fuel pump, the CO was required to call in the Special Investigation Unit. This did not occur.⁴⁶⁹

Paragraph 13 goes even further in explaining why the use of force was considered necessary. Col Labb   thought that the first version of Capt Hope's report did not provide enough context for those at NDHQ to appreciate the necessity of the soldiers' actions. To that end, he gave Capt Hope, through LCol Mathieu, clear instructions to discuss in detail the speed of events, the confusion, the conditions at night, and the use of night-vision goggles.⁴⁷⁰ Again, the purpose of this additional information was to emphasize the

potential danger, as the actual danger was negligible. Only by establishing a plausible threat would the use of force be justified. Thus, for example, the limitations of the night-vision devices were played up to explain that although no obvious weapons were seen, it was impossible to determine whether the Somalis had any concealed weapons.

The “high probability” of the Somalis being armed is emphasized, but the fact that no weapons except the ritual knife were found is not highlighted. The difficulty of switching between night-vision devices and the naked eye is emphasized, but only one soldier appears to have had a problem, and nowhere does the report mention that Recce Platoon members are trained specifically in the use of these devices and in operating at night.⁴⁷¹ On the whole, however, we are of the view that the information in paragraph 13 is not supported by the statements of patrol members, and “there is no evidence in their statements that the conceivable limitations of equipment and environment actually played a role in their actions.”⁴⁷²

There are, finally, several problems with the findings and recommendations of the report. In paragraph 21, Capt Hope finds that Detachment 64A heard “yelling and shots from the helipad area” and that “it was highly likely that the Somali had been in an exchange of fire with Cdn troops”. It is not clear, however, where he draws these conclusions from. None of the members of Detachment 64A said they heard shouting or shots from the helipad area; they all place the action of Detachment 63 much further south. With regard to the likelihood that the Somalis fired at Canadian troops, it is not plausible that Detachment 64A believed this at the time: they had watched the Somalis approach for 10 to 15 minutes and observed no weapons; there had been no indications from any of the members of Detachment 63 that they were under fire; and they received no warning to this effect from Detachment 69. It is also fairly clear from Cpl Roch Leclerc’s statement that he could see the action taking place at Detachment 63’s location, and he made no mention of seeing the Somalis firing any weapons.⁴⁷³ A similar difficulty exists with the statement that MCpl Countway attempted to run after Mr. Aruush to capture him after the first shot hit him.⁴⁷⁴ MCpl Countway did not state that he ran after Mr. Aruush. He stated that he stood up, then dropped back to a kneeling position before firing a second time.⁴⁷⁵ MCpl Countway also did not state that Mr. Aruush got up and continued running, only that he was attempting to get up and was in a push-up position or a sprinter’s position when he fired the second time.⁴⁷⁶

Capt Hope recommends no modification of the Rules of Engagement, as they “are simple, straight forward and effective”.⁴⁷⁷ But given the confusion about the January 28th order, as well as the difficulties around hostile intent and hostile act, Capt Hope indicated in his testimony that there was considerable confusion about the Rules of Engagement.⁴⁷⁸ In his report he also

recommended that “more wire, night observation devices and lighting would make the compounds more secure.”⁴⁷⁹ This is of course what Capt Mansfield offered Capt Rainville, who refused the offer.

Interestingly, although Capt Hope recommended security measures that Capt Rainville deliberately rejected, Capt Hope’s conclusion remains that the actions of the soldiers were “reasonable and fully justified in the circumstances and were clearly in accordance with the Rules of Engagement...”. Yet the report goes on to conclude that “a clear, strong message has been sent to those who are thinking about breaching Cdn wire and hopefully this incident will have a strong enough deterrent effect making further shooting incidents unnecessary.”⁴⁸⁰

The last statement is particularly troubling, because the implication is that the Recce Platoon went out on the night of March 4th to send a message that any attempt to breach Canadian wire would result in gunfire and that the shooting was thus deemed necessary.⁴⁸¹

Capt Hope’s summary investigation report was presented in such a way as to suggest that it was a complete and thorough examination of the events of March 4th, with statements from and interviews of all the available witnesses; sadly, this was not the case. It is not clear that compelling or unavoidable operational constraints precluded the conduct of a proper investigation that conformed to Canadian standards and practices,⁴⁸² yet a proper investigation was not done. This was compounded by Col Labbé’s decision to accept the findings of the summary investigation as final when it was clear that a great deal of investigation remained to be done.⁴⁸³

The changes Capt Hope was directed to make to his report also call into serious question the integrity of the investigation, as they were designed beyond doubt to remove any suggestion that either Col Labbé or LCol Mathieu authorized the interpretation of the Rules of Engagement under which the Recce patrol was working. Capt Hope has no explanation for this;⁴⁸⁴ in fact he has been left asking whether he was deliberately misled by his superiors.⁴⁸⁵ It is puzzling, therefore, that even though the investigation concluded that no hostile act had been committed — rather, only hostile intent was present — the shootings were found to be justified. This could be true only if breaching the wire constituted a hostile act, which, it was explained to Capt Hope, was not the case.⁴⁸⁶

Hostile intent could potentially have led to the same response from the Recce Platoon. Simply approaching the compound would not have constituted hostile intent, nor would attempting to penetrate the wire necessarily constitute hostile intent. Furthermore, the investigator had evidence that Mr. Aruush and Mr. Abdi were shot in the back as they ran away from the compound, which indicates that hostile intent, if it ever existed, had ceased.

It is also remarkable that Capt Hope would be ordered to change his report to remove mention of a policy that had been expressed in a message from CARBG headquarters to Canadian Joint Force Somalia headquarters in the section reserved for CO's comments. This was a significant departure from established procedure. Finally, the litany of errors and inconsistencies in the findings and recommendations render the summary investigation report more misleading than revealing and leave almost as many questions unanswered as answered.

Conclusion: Consequences of the Summary Investigation

Capt Hope's assignment of March 5th was essentially impossible to accomplish with any degree of rigour given the time constraints and his total lack of training and experience as an investigator of incidents involving possible criminal acts. As a result, his report did not examine critically any of the actions of the Recce Platoon. Rather it served to portray them in the best possible light. This had the effect of inhibiting further serious investigation of the shootings of March 4, 1993.

From the point at which Capt Rainville debriefed Capt Kyle, LCol Mathieu and Col Labb  , shortly after the shootings, it is obvious from the evidence we heard that the decision had been made that the shootings were justified. All that remained was to provide an explanation to NDHQ. This was the task for which Capt Hope was chosen. LCol Mathieu told his orders group on March 5th that the shootings had been within the Rules of Engagement, and this is what Col Labb   told the press the same morning. Capt Hope said he was unaware of this when he began his investigation.⁴⁸⁷

By Capt Hope's own admission, his report on the March 4th incident was hopelessly flawed. He had serious reservations about his appropriateness as the investigator. He explained that his inexperience led him to commit errors in the conduct of an investigation involving a suspicious death and possible criminal actions. He was not a trained investigator and was not in a position to seek advice from an expert in these matters. Time did not permit a thorough, procedurally correct investigation. The result was a flawed report that portrayed the shootings and the environment in which they occurred inaccurately or misleadingly. The report was one-sided, incomplete and entirely subjective. Further, the changes ordered to the report served the sole purpose of providing greater justification for the actions of the Recce Platoon.

The result is that the events of March 4th escaped critical examination. Efforts centred on providing an explanation and a justification for the use of a degree of force that went well beyond what was allowed under the Rules

of Engagement. This prejudiced the investigation and rendered its ultimate conclusions inevitable. An endorsement of Capt Hope's findings as final by the chain of command prevented further timely investigation into the matter, and as a result whitewashed the events.

CONCLUSIONS AND FINDINGS

Recce Platoon's Mission and the Means Available to Achieve It

It is clear from the evidence adduced at our hearings that the mission assigned to the Reconnaissance Platoon was to provide additional security to the Engineers compound, not to apprehend thieves. The fact that Capt Rainville did not receive clear guidance from the chain of command — allowing him, without his superiors' knowledge, to reinterpret the mission as being to apprehend infiltrators — illustrates the extent of leadership problems in the unit and the poor quality of communication within the chain of command.

Indeed, it would have made no sense for the Recce Platoon to apprehend thieves; thieves apprehended previously had been released immediately to the local police, as required by the prevailing policy. In addition, Capt Hope, the officer in charge of military intelligence, testified that he did not interrogate any of the Somalis apprehended. What would have been the purpose of apprehending Somalis if they were not to be interrogated for intelligence purposes and were to be released the next morning?

The assistance sought by the Officer Commanding the Engineers Squadron was to enhance security at their compound to deter illegal entries by thieves. Many means were available to achieve this goal that were compatible with the policy of restraint and the use of minimal force embodied in the Rules of Engagement.

First, an adequate lighting system could have been installed. Indeed, a lighting tower had been brought up that day from the airfield, under Capt Mansfield's instructions, and was fully operational. Additional lighting could easily have been set up along the perimeter wires. Similarly, a surveillance tower was offered but was refused. Para flares could have been used when suspected thieves were seen approaching the compound, and an area outside the wire could have been bulldozed to make it more difficult to approach the compound.

These options, submitted by Capt Mansfield through WO Marsh, were turned down by Capt Rainville, who wanted to use the advantage that his night-vision instruments gave him over potential intruders. Capt Rainville asserted that lighting would have jeopardized his mission. We strongly disagree.

First, lighting would have acted as a powerful deterrent, especially if complemented with roving patrols inside and/or outside the wires.

Second, it is not true that the lighting tower would have compromised the use of night-vision goggles. We tested these devices for ourselves in Ottawa during the Inquiry and found that the instruments benefit from additional light, provided it is not directed straight at the goggles. We therefore conclude that a lighting tower would have been no obstacle to their use. The real inconvenience for Capt Rainville and his men would have been that additional light would have made them visible to intruders. The same applies to the use of a surveillance tower. Again, while this would have been seen as an inconvenience by Capt Rainville, it would actually have been a positive factor in deterring potential thieves, who would have seen a lighted compound with active and effective patrols.

We heard testimony from Recce Platoon members that their mission was to capture saboteurs. We are convinced beyond a reasonable doubt that this sabotage theory is a fabrication, concocted after the fact in an attempt to justify the shooting in the back of two fleeing men. There is simply nothing in the evidence objectively to support such an explanation.

It also runs counter to the explicit and express request from the Officer Commanding the Engineers for additional security to prevent theft at their compound. At no time did Capt Mansfield express concerns about sabotage with regard to the compound; rather, he expressed exasperation at the endless series of petty thefts and the Engineers' inability to stop the nightly infiltrations.

Furthermore, the evidence reveals that no soldiers in the camp at Belet Huen had ever been attacked or injured by thieves and that thieves would flee when confronted by Canadian soldiers. More often than not, thieves were unarmed, and many were children; but even in the case of adults, there were no reported instances of thieves attacking Canadian soldiers or Canadian installations at Belet Huen.

Some witnesses tried to persuade us that the theft of a fuel pump near the Helicopter compound on March 3rd was an act of sabotage. This is plain nonsense. The large, heavy pump was left unguarded and unattended. It was near the fuel depot, which was also unguarded. Had an act of sabotage been intended, the entire fuel depot could easily have been blown up. If the fear of sabotage in connection with the loss of the fuel pump was genuine, the Commanding Officer was required to ask the Special Investigation Unit to conduct an investigation. He did not do so.

If sabotage was feared, why was the pump left unguarded? Why was a fuel depot containing 80,000 litres of fuel left unattended? Why was the Helicopter compound left without surveillance? Why was no one tasked specifically to patrol these areas? Why were the Helicopter compound and

the fuel depot established beside a main road, at grenade-throwing distance from it? If this was done to facilitate access to the fuel bladders by refuelling trucks, was security sacrificed for the sake of convenience?

The Operation Conducted by the Recce Platoon

The operation conducted by the Recce Platoon, as planned by Capt Rainville on the night of March 4, 1993, does not support the explanation that its mission was to capture saboteurs expected to show up at the Helicopter compound. Indeed, the operation conducted that night was nothing less than a trap designed to injure and kill Somalis.

Bait consisting of food boxes and water jerrycans was placed in broad daylight in a trailer that would be visible from the south-end perimeter wire of the Engineers compound, in a location facing and adjacent to the path used regularly by the local population to go from its settlement to the river.

At each end of the southern part of the compound, arcs of fire were defined around the bait using glow lights visible only to those using night-vision goggles. A sniper under the direct and immediate authority of Capt Rainville, equipped with night-vision goggles and a sniper rifle mounted with a night-vision scope, lay in ambush inside the compound, some 80 metres from the bait, which was in the centre of the arcs of fire. Hidden cut-off patrols, also equipped with night-vision goggles, rifles and one shotgun, were positioned outside the perimeter, facing the bait. The apprehension and perception among the troops was that there would be shooting that night.

The roving patrol inside the compound, composed of Engineers personnel, was reduced to one sentry; the balance remained on stand-by, watching television. The roving sentry was also restricted to patrolling the northern part of the compound and was told not to venture further south than the level of the tent line, some 30 metres from the truck in which the sniper and Capt Rainville were positioned. In other words, the sentry was to patrol just one-third of the Engineers compound; security for the remaining two-thirds was to be provided by Capt Rainville and his men.

The evidence reveals that, just before 8 p.m., Cpl Lalancette, posted in the 1 Commando tower, spotted two Somali men walking down the path from the main road toward the south-east corner of the Engineers compound.

The two men, Mr. Abdi and Mr. Aruush, remained under constant observation by Cpl Lalancette, who was using a heat sensor device for night-time vision. The men walked normally along the path beside the eastern perimeter of the Engineers compound. Half-way along the eastern side, they sat down, and one of the men went to touch the wire. Cpl Lalancette reported this to the Engineers who relayed the information to Capt Rainville inside

the compound. The observation was also picked up then by Detachment 64A, located about 100 metres off the south-east corner of the Engineers compound.

Detachment 64A observed no weapons on either Mr. Abdi or Mr. Aruush during the 10 to 15 minutes they watched them walk along the wire. The men stopped twice outside the wire to look in the direction of the bait as they continued their progress around the compound, heading toward the location of Detachment 63, which was supposed to be positioned 100 metres off the south-west corner of the compound. However, Detachment 63 had moved further north, concealing themselves behind a well located some 75 metres from a temporary gate in the west-side wire of the Engineers compound, fairly close to the position of Capt Rainville and his sniper, Cpl Klick.

This is where the patrol members' story begins to fall apart. Capt Rainville and some of his men maintain that Mr. Aruush and Mr. Abdi went up to the Helicopter compound perimeter and actually breached the wire, setting in motion efforts to capture them. There is no reason, however, to believe any of the testimony to this effect. Given the many inconsistencies and contradictions in the testimony, the story simply cannot be supported. Mr. Aruush and Mr. Abdi never went anywhere near the helicopters; in fact, when they approached the position of Detachment 63, its members stood up and shouted to them to halt. When the Somalis turned and fled, Sgt. Plante opened up with his shotgun, hitting Mr. Abdi in the buttocks.

Mr. Aruush continued to flee, and Detachment 63 gave chase until he entered the arc of fire of Detachment 64A. Detachment 63 then returned to Mr. Abdi, because it was clear that Detachment 64A would have no difficulty capturing Mr. Aruush. However, immediately after Cpl Smetaniuk ran out from Detachment 64A's position to chase Mr. Aruush, Cpl Roch Leclerc fired a warning shot. Then he and MCpl Countway fired for effect. Mr. Aruush was hit once and went down, seriously injured. While he was struggling to get up, he was shot twice more by MCpl Countway and Cpl Roch Leclerc.

The operation carried out by the Reconnaissance Platoon was in clear violation of the Rules of Engagement for the Somalia deployment and resulted from an abhorrent failure of leadership. Mr. Aruush and Mr. Abdi were shot in the back while fleeing the Canadian installation, and both were unarmed except for a ritual knife, which was not even removed from its sheath during the incident. In our view, there was no evidence of a threat to Canadian or Coalition troops, installations, or relief material, and the response was undoubtedly disproportionate to the situation.

The mission resulted in the unnecessary and unacceptable death of Mr. Aruush and the wounding of Mr. Abdi. The only explanation for this was a series of failures in leadership that allowed pent-up frustration to boil over into a situation in which non-violent means of deterrence were discarded in favour of a more aggressive use of force.

No specific guidance was given on how to augment security at the Engineers compound. Bait was improperly placed to lure thieves into the compound. Death by ambush was the all but inevitable result for unsuspecting Somalis who happened to come too close to the Canadian wire that night. This mission stands in stark contrast to the fine reputation for excellence and restraint that is the hallmark of Canadian peacekeeping troops around the world. It showed disregard for the lawful conduct of operations and undermined the professional values and attitudes of the Canadian military. The results were an affront to the thousands of men and women who take justifiable pride in the honourable service they have rendered their country as peacekeepers.

THE COVER-UP

The March 4th incident could have been prevented with appropriate guidance and leadership from the chain of command in Somalia and at NDHQ. More disturbing and confounding, however, is the subsequent reaction of the chain of command to the incident and its failure, because of flawed organizational practices and deficient systemic requirements, to respond adequately in a timely manner. Indeed, we believe that specific actions and lack of action on the part of the chain of command in Somalia and at NDHQ delayed the required Military Police investigation and served to conceal the truth from Canadians.

Within hours of the shootings, Canadian Forces officers in Somalia and at NDHQ tried to conduct damage control and concoct a cover-up "spin" to avoid bad publicity. The cover-up resulted in a delay of almost six weeks in ordering a Military Police investigation. The result was the loss of valuable time and physical evidence that was vital to determining what took place on the evening of March 4th.

Throughout this almost six-week delay, however, Maj Armstrong conscientiously pursued the truth by attempting to go through the chain of command with his allegation of murder. Maj Armstrong remained the courageous figure whose pursuit of accountability within the Canadian Forces finally led to the Military Police investigation, contributed to the establishment of this Inquiry, and started the search for the truth about the March 4th incident.

The cover-up in Somalia and at NDHQ manifested itself in several ways. The initial impetus for not allowing problems in the military to see the light of day came from the daily executive meeting of March 1, 1993. Documents filed with this Inquiry indicate that the Deputy Minister of National Defence,

Robert Fowler, urged DND personnel to keep a “low profile” because of the political situation.⁴⁸⁸ No matter how this was intended, there is no doubt about how it was generally understood at NDHQ and in Somalia. The admonition filtered down quickly through the chain of command and dictated how information would be managed throughout the Canadian Forces, at NDHQ and in Somalia, and how it would be presented to the Canadian public.

A further complicating matter in relation to the March 4th incident was the fact that Canadian Forces officials in Somalia, whose leadership and conduct were at issue, initially chose an inappropriate avenue of investigation. The result was irreparable damage to the potential effectiveness of the eventual Military Police investigation, conducted almost six weeks later. As a direct result of poor management of the investigation, officials in theatre and at NDHQ created the potential for critical physical evidence to deteriorate, for collusion to take place among the individuals involved, and for command influence to play a part in events following the incident.

Having determined the proper “spin” to place on the events, officers in Somalia and at NDHQ went about managing the flow of information to ensure that the “correct” version of events was given to the Canadian public. As a result, what had been clearly a suspicious death, involving the use of excessive force, was misrepresented as simply a problem with the interpretation of the Rules of Engagement by a few soldiers on the ground. To the media, the incident was further misrepresented from the outset as an unfortunate event that resulted from concern about “possible saboteurs” around the Canadian compound at Belet Huen.

Clearly, a serious problem with the in-theatre understanding of the Rules of Engagement did manifest itself on March 4th and throughout the deployment. But having identified this difficulty on the morning of March 5th, the chain of command then failed to take adequate steps to ensure that the situation was remedied appropriately. In our view, the March 8th orders group briefing on disengagement — in itself an admission that earlier interpretations of the Rules of Engagement had been incomplete and misleading — was not sufficient, since nearly three months later Rules of Engagement problems persisted in theatre,⁴⁸⁹ even after assurances to the contrary had been given by the chain of command in Somalia.⁴⁹⁰

It was this constant preoccupation with public image and the failure to address the evident administrative and operational problems with regard to the March 4th incident that possibly set the stage for the alleged beatings on March 14, and 15, 1993 (see chapter 42) and for the torture and murder of Shidane Arone on March 16th, a death that deeply shocked the Canadian public and the international community.

The Information ‘Chill’

The cover-up of the March 4th incident can be traced back initially to the low-profile approach adopted a few days earlier at NDHQ. According to the minutes of the daily executive meeting for March 1, 1993, the Deputy Minister of National Defence, Robert Fowler,

emphasized the necessity for extreme sensitivity in all matters relating to public statements, speeches, press releases, etc. by all members of the Department over the next few months in view of both the expected candidacy of the Minister in the Conservative leadership race and the forthcoming general election. He directed that the department should take as low a profile as possible.⁴⁹¹

This approach may have been merely cautious, but there is no disputing that it was adopted in an effort to keep the military out of the press and the public eye during a period of political sensitivity. It was aimed strictly at the external release of information to the media, and we believe it was passed, in one form or another, throughout the chain of command. As a result, there was a lack of communication and information flowing from the chain of command at NDHQ and in Somalia on March 4th and a deliberate effort by officials to avoid any form of bad publicity.

It is our belief that Mr. Fowler’s statement, however it may have been intended, had a ‘chilling’ effect as it filtered quickly throughout the department and Canadian Forces in terms of the forthrightness with which information was handled within NDHQ and released to the press.

As Col Haswell’s testimony indicated, there was already a general tendency to restrict information within NDHQ at this time. There was a great deal of concern at very high levels in the department that nothing be done to interfere with the minister’s bid for the leadership of her party.⁴⁹²

Before the March 1st daily executive meeting, a low-profile approach had apparently already been adopted in Somalia. Maj Moffat indicated in his correspondence to CARBG Headquarters on February 21st:

Strongly request (indeed on bended knee I beg) that whenever deadly force is used your duty officer phone this HQ as soon as possible. Details can follow later if not immediately available, but at least we will know something has happened. The potential for information to get out on other than our means (press, U.S. special forces) is high, and for misinterpretation, the same even greater. If we are not aware we cannot deflect unwanted interference or, more importantly, we cannot correct inaccuracies with the press or UNITAF HQ.⁴⁹³

Maj Moffat asserted in his testimony that he was not entirely sure what he was trying to convey in the message and that perhaps it demonstrated a poor choice of words on his part.⁴⁹⁴ It appears, however, that his choice of words was in fact quite expressive.

There were immediate indications at NDHQ and in Somalia that the low-profile approach was having an effect on the aftermath of the March 4th incident. However benign its origins may have been, the concealment of information from the media became a priority that was communicated from officers and officials at NDHQ to soldiers in Somalia. In Belet Huen, Capt Rainville immediately told Recce Platoon members during their March 4th debriefing that they should avoid speaking with the press about the incident.⁴⁹⁵ The Recce Platoon members took this order to heart.

NDHQ made its own low-profile requirements known through their messages to CJFS Headquarters and Col Labb   on the morning of March 5th. NDHQ informed CJFS Headquarters that they had immediate concerns that the news media had found out that Mr. Aruush had been shot in the back.⁴⁹⁶ Concerned about the release of information, NDHQ indicated in a message to Col Labb   that the Deputy Chief of the Defence Staff, VAdm Murray, was very uncomfortable with Col Labb   talking to the press solely about the March 4th incident. Col Labb   was told in the message that he should be “sensitive” to the extent and nature of the Minister’s concerns about the previous shooting incident (at the Bailey bridge on February 17, 1993).⁴⁹⁷

Finally, it was the Chief of the Defence Staff, Adm Anderson himself, who re-emphasized the need to keep a low profile during a visit to Somalia. It was on March 8th, only days after the shooting, that he told Canadian soldiers and senior officials in Belet Huen that the Minister of National Defence was about to seek the party leadership and that they should be careful not to do anything that would embarrass her or detract from or interfere with the leadership bid. In essence, Adm Anderson told the troops that they should not make any waves.⁴⁹⁸

These events clearly depict a military chain of command seeking to keep whatever dirty laundry it might have from exposure to the press and to the Canadian public. The effect of the information ‘chill’ was to erect a virtual wall of silence around the March 4th incident.

Systemic Investigation Problems

The cover-up of the incident can also be traced back to systemic problems that were manifest in the actions of the chain of command in Somalia. First, the incident was not reviewed appropriately on March 4th by appropriate officials, who were in the area and were available to conduct such a review.

Following the incident, Col Labb   and LCol Mathieu conducted their debriefing with Capt Rainville in an effort to understand the events that led to the shootings. A thorough report and debriefing should have included recollections of additional witnesses, other than those of the Recce Platoon

leader. As Recce Platoon leader, Capt Rainville was both a participant in the event and responsible for planning, preparing for, and carrying out the mission. In testimony before us, he acknowledged that important information was omitted from his debriefing.⁴⁹⁹

However, Col Labb  and LCol Mathieu indicated to us that they relied solely on Capt Rainville's information to determine the seriousness of the incident. They did not see a need to review the incident further that evening. The result of the debriefing was a written statement and a drawing by Capt Rainville of how the Recce Platoon had been deployed. Col Labb  kept the drawing for personal reference.

Second, a CO's investigation into the incident was not ordered. In the circumstances, a CO's investigation was not required by prevailing organizational practices and systemic requirements, although it is obvious that one should have been ordered immediately to clarify the incident. But there is no evidence that this was done by CARBG Headquarters or by CJFS Headquarters. Col Wells and Maj Buonamici were absolutely clear in their testimony, however, that based on the information in Capt Rainville's debriefing, it was abundantly obvious that a Military Police investigation was required.⁵⁰⁰ But nothing was done. The incident was discussed by the Commanding Officer on the morning of March 5th at the CARBG orders group, where he deemed the actions of the Recce Platoon and the application of the Rules of Engagement appropriate. The Commanding Officer made no mention of any form of CO's investigation at the orders group.⁵⁰¹

The CO's investigation was ordered the day after the incident by the Commander CJFS.⁵⁰² Although both Col Labb  and LCol Mathieu testified that it was LCol Mathieu who ordered the CO's investigation on March 4th, the evidence does not support this assertion. The log books indicate that the CO's investigation was initiated by CJFS Headquarters on the afternoon of March 5th with the request to take statements and complete a CO's investigation.⁵⁰³ The March 6th situation report from Col Labb  to NDHQ also stipulates that Col Labb  ordered the CO's investigation.⁵⁰⁴ Finally, Col Labb  himself admitted in his letter to the Military Police investigation team that he had ordered the CO's investigation.⁵⁰⁵ Why was there such an extended delay in commencing an investigation?

Third, there was no compliance with the CJFS Headquarters' request that a CO's investigation be conducted. Capt Hope's request for permission to conduct a summary investigation instead was understandable, since he had never conducted a CO's investigation. However, the Commanding Officer's agreement that a summary investigation could take the place of a CO's investigation is difficult to understand, because the instructions from CJFS Headquarters on March 5th were clear and specific.⁵⁰⁶ In our view, given the suspicious nature of the death and Maj Armstrong's allegations,⁵⁰⁷ only one

appropriate option was available to the chain of command in Somalia: an immediate Military Police investigation. The course chosen, however, was a summary investigation, not the Military Police investigation required in cases of suspicious death, or the CO's investigation ordered by CJFS Headquarters.

Capt Hope's summary investigation did not begin in earnest until after his return to Belet Huen on the afternoon of March 5th. As a result, the summary investigation failed to preserve the scene of the shooting or recover any physical evidence from the incident. The only evidence that remained once the investigation was finally ordered almost six weeks later were faded memories and a decayed body.

Fourth, institutional requirements should have triggered an immediate Military Police investigation the moment Maj Armstrong's allegation came to light. It is clear from Maj Armstrong's evidence before the Inquiry that he made every attempt to inform the chain of command of his allegation of a wrongful death. Had it not been for his persistent pursuit of accountability and the events of March 16th, the unlawfulness and improprieties of the March 4th incident might never have come to light. That his allegation of murder could be ignored is shocking and inexcusable.

Maj Armstrong concluded after examining Mr. Aruush that it was a suspicious death. He informed his superior officer, Maj Jewer, at 9:30 p.m. on March 4th, that he suspected a murder had taken place.⁵⁰⁸ The evidence reveals that Maj Armstrong then contacted Capt Kyle at CARBG Headquarters in the early morning hours and Maj Parsons at CJFS Headquarters at 2:10 a.m. on March 5th.⁵⁰⁹ Maj Armstrong raised concerns in both calls that this was a criminal matter, not a public affairs matter, and that the death was in fact a homicide.⁵¹⁰ Capt Kyle made LCol Mathieu aware of Maj Armstrong's allegation on the morning of March 5th.⁵¹¹

By the morning of March 5th, Maj Armstrong had done everything in his power to inform the appropriate members of the in-theatre chain of command, including his medical platoon superior, CARBG Headquarters and CJFS Headquarters, of his concerns about the death. Yet the in-theatre chain of command did not call for a Military Police investigation.

Furthermore, Maj Armstrong made his written medical report on Mr. Aruush available to Maj Jewer, Maj Vanderveer, and LCol Mathieu on March 6th. The report included photographs of the wounds and mentioned the word "dispatch" in reference to Mr. Aruush's death. As Col Wells testified, it would take somebody a minute to know what the report meant.⁵¹² In a meeting with Maj Jewer, Maj Armstrong reiterated his concerns.⁵¹³ Capt Hope received Maj Armstrong's report at 4:00 p.m. on March 6th. After reading the allegation of murder, he alerted LCol Mathieu to the contents of the medical report and the seriousness of the allegation at 5:00 p.m. on March 6th. Capt Hope then waited for further instructions but received none.

Maj Armstrong spoke about the report with LCol Mathieu for the first time on the evening of March 6th. During their conversation, Maj Armstrong used the words “murder” and “meurtre” in reference to the death of Mr. Aruush.⁵¹⁴ LCol Mathieu understood what was alleged, but he told Maj Armstrong that he thought the shooting had been justified.⁵¹⁵ In testimony before us, LCol Mathieu spoke disparagingly about Maj Armstrong and said he did not greatly credit what he heard from him. LCol Mathieu offered the example of a police officer who saw someone trying to break into a building; if the criminal fled the scene and did not stop when told, he concluded, the policeman would be quite justified in shooting the person, in the back, if necessary,⁵¹⁶ thereby indicating his fixed belief that the shootings were justified.

Whatever the justification may have been under systemic or organizational practice for carrying out a summary investigation, Maj Armstrong’s allegation was serious enough to justify cancelling Capt Hope’s summary investigation and ordering an immediate Military Police investigation. However, Maj Armstrong’s allegation was never reviewed further by Capt Hope or LCol Mathieu. It was reasonable for Maj Armstrong to expect that LCol Mathieu would inform the chain of command that there had been an allegation of a suspicious death, but there is no evidence of any such communication. There was a deliberate decision on March 6th, even with a medical officer’s allegation of a suspicious death, to carry on with the summary investigation. It was at this point that the conscious cover-up in Somalia began, since crucial information was being ignored deliberately and perhaps held back from senior members of the chain of command at NDHQ.

At NDHQ, prompt and decisive action to respond to the March 4th incident was required but never undertaken by the chain of command. As early as the time of the first report from Somalia, NDHQ expressed concerns about the excessive use of force by the Recce Platoon.⁵¹⁷ NDHQ’s concern was later explained as an administrative concern with respect to the Rules of Engagement and an attempt to prevent a repetition of the incident.⁵¹⁸ The evidence reveals, however, that very little was done to dissipate confusion, for example, by way of active direction and guidance and subsequent monitoring to ensure that directions were implemented. Although the Deputy Chief of the Defence Staff did address the Rules of Engagement interpretation in late April 1993⁵¹⁹ and was reassured that “all ranks under Col Labbé’s command are fully conversant with the Rules of Engagement”,⁵²⁰ there is little evidence of immediate direction and supervision from the chain of command after the March 4th incident.

On the contrary, in May 1993, MGen de Faye wrote to NDHQ to express concern that a substantial number of soldiers believed they could shoot at fleeing looters.⁵²¹ It is our view that NDHQ used the issue of confusion about

the Rules of Engagement as an after-the-fact justification of their failure to order a Military Police investigation immediately.

Although NDHQ was apparently not aware of Maj Armstrong's allegation, they were still very concerned on March 5th that Mr. Aruush and Mr. Abdi had been shot in the back. Their concerns were heightened by LCol Mathieu's written response and the March 5th situation report, which indicated a clear failure to understand the Rules of Engagement. NDHQ should and must have been aware that the incident posed serious problems. At best, however, their failure to respond initially by ordering a Military Police investigation resulted from receiving incomplete information from Somalia. As well, the Deputy Chief of the Defence Staff was assured by Col Labbé on the evening of March 5th that a CO's investigation would be taking place and that a response would be available within 48 hours.

During this waiting period, the Director General Security at NDHQ, Col Wells, began to prepare a team of Military Police investigators for travel to Somalia in case they were called on to conduct an investigation.⁵²² As Col Wells testified, the surest rule is, when in doubt, send in the MP.⁵²³ Getting a Military Police unit to Belet Huen, if ordered, would take time, however, since they would require the appropriate inoculations and the flight itself would take some time. In the absence of a request from Col Labbé, they would also require the approval of the Deputy Chief of the Defence Staff to enter the theatre of operations.

NDHQ's wait-and-see approach was tolerable until March 7th, three days after the incident. On Monday, March 8th, however, NDHQ had still not received the promised CO's report. Nothing was done about this. There was apparently no pressure on Col Labbé from anyone at NDHQ to deliver some form of report immediately. Time was becoming a factor in the investigation, yet no one seemed concerned at NDHQ, aside from the Director General Security (DG Secur), who asked the Deputy Chief of the Defence Staff (DCDS) whether the MPs should be sent to Somalia.⁵²⁴ Why did NDHQ take a hands-off approach to the apparent inaction of the chain of command in Somalia in dealing with what was clearly a serious incident with potentially wide-ranging implications? In our view, a prompt and decisive response was required, but none was forthcoming from NDHQ.

The DCDS elected not to initiate a Military Police investigation right away; he told DG Secur that he was still awaiting a report from Col Labbé. No one seemed to be pushing Col Labbé for this report. In fact, Col Labbé was told by Col O'Brien on March 8th that the pressure was off and that there was no longer urgency with respect to getting the report to NDHQ.⁵²⁵ As well, DG Secur thought that his requests for a Military Police investigation team were being stonewalled.⁵²⁶ At this point NDHQ clearly decided to wait, even though the decision could not be deferred indefinitely.⁵²⁷

Another sign that NDHQ was aware of or must have known about serious problems with the incident occurred on Tuesday, March 9th, when a meeting was held between the DCDS, DG Secur and Col O'Brien. The subject of the meeting was the appropriateness of using the U.S. Criminal Investigation Division (CID) in the event that a Military Police investigation of the March 4th shootings was required. This was the first time DG Secur learned of the idea of using an outside police investigation team. He expressed his disapproval and offered a compromise solution: if the U.S. CID were called in, a Canadian MP, Maj Klassen, attached to UNOSOM in Nairobi, should be put in charge.⁵²⁸

The fact that Col O'Brien had discussed with Col Labb  on March 5th the possibility of using the U.S. CID tends to indicate that he considered the March 4th incident serious even then.⁵²⁹ In fact, logs indicate that by March 9th, after he had received Capt Hope's summary investigation report, Col Labb  had already decided to ask the U.S. CID to investigate the incident and had tasked Capt Philippe to go with them.⁵³⁰ If Col Labb  was convinced that the Recce patrol had acted appropriately, as he indicated to NDHQ, why would he consider, and then ask for, a U.S. investigation team?

At this stage, the seriousness of Maj Armstrong's allegations were known throughout the chain of command in theatre. Maj Armstrong had informed LCol Mathieu, Maj Jewer, Capt Kyle, and Maj Parsons, who told Maj Moffat, who then told Col Labb .⁵³¹ NDHQ was informed through the March 10th situation report that Col Labb  had decided to send the U.S. CID and Capt Philippe to investigate the March 4th incident.⁵³² Col Labb 's decision regarding the U.S. CID is also noted in the March 10th J3 operations note.⁵³³ Throughout this period, NDHQ was in daily contact with Col Labb . By March 10th, therefore, the suspicious death allegation should have made its way to NDHQ through several channels, yet apparently nothing was done. In our view, NDHQ's failure to send in Military Police investigators was inconsistent with their knowledge about the suspicious nature of the March 4th shootings.

In addition, on March 14th, Capt Philippe unequivocally informed Col Labb  of Maj Armstrong's allegation and its seriousness.⁵³⁴ Capt Philippe then informed his superior at NDHQ, LCol Watkin, part of the Judge Advocate General chain of command.⁵³⁵ Maj Armstrong's allegations were thus made known to NDHQ's legal advisers within 10 days of the March 4th incident.

Finally, on March 23rd, more than two weeks after the report was promised, NDHQ received a faxed copy of Col Labb 's personal report on the incident; the fax did not include copies of documents referred to in the report, including Maj Armstrong's statement. Capt (N) Blair, the acting

Judge Advocate General, tasked LCol Watkin to perform a legal review of Col Labb  's report. LCol Watkin discussed the need to review the CO's investigation report and, in particular, the statements of the men involved in the shooting, in order to perform a thorough legal review. Capt (N) Blair contacted Cmdre Cogdon, the DCDS's chief of staff, to request the CO's investigation report and supporting documents.⁵³⁶ Why was the supporting material not attached to the report? Why was the supporting material brought to Ottawa by Col Labb   personally on April 2nd, further delaying its delivery? Why did the chain of command fail to act swiftly to deal with these delays? As noted in the legal review conducted by LCol Watkin, there appeared to have been a considerable delay in getting the CO's investigation report completed.⁵³⁷

Delays did not end once the Military Police investigation was ordered on April 14th. There was some discussion before us about the freedom of the Military Police investigators to investigate the incident thoroughly and without restriction. During the investigation, Maj Buonamici felt that there was continuing interference from above.⁵³⁸ The investigation team issued their final report on August 24, 1993. In it they indicated that the police investigation had been "inexplicably delayed for five weeks causing the irretrievable loss of physical evidence, faded recollections, increased opportunities for collusion and command influence."⁵³⁹ We believe that this interference began from the moment the March 4th incident became known to the chain of command.

NDHQ has explained the delay in starting the Military Police investigation as resulting from a lack of information from the theatre of operations. However, the evidence points to the conclusion that NDHQ must in fact have had considerable knowledge of the events in theatre. In our view, NDHQ should have known, or should have taken reasonable steps to know about the incident. At best, NDHQ acted out of willful blindness; at worst, it deliberately covered up the incident. Victimized by systems and practices of its own devising, NDHQ managed the March 4th incident investigation incorrectly, and its decision to take no action when positive action was required remains a fatal flaw in the investigative process.

The 'Spin'

We heard evidence from Maj Armstrong and from members of CARBG Headquarters and CJFS Headquarters that there were a number of communications between NDHQ and Somalia following the March 4th incident. We are convinced beyond a reasonable doubt that a "damage control" operation was under way immediately after the shootings and that the interest

of NDHQ in the medical information⁵⁴⁰ was motivated by the desire to “spin” the story appropriately to the media. This follows from the general atmosphere permeating NDHQ after the cautions delivered at the daily executive meeting on March 1st.⁵⁴¹

The actions taken in Somalia and at NDHQ had the effect of covering up and clouding the truth of what actually happened on March 4th: that members of the Canadian Forces undeniably used excessive force in the shootings that night. This “damage control” approach and failure to investigate the March 4th incident properly and to correct glaring problems with regard to interpretations and understandings of the Rules of Engagement may have unwittingly set the stage for the March 16th incident.

Military “spin doctors” were at work at NDHQ and in Somalia virtually minutes after the incident became known. NDHQ received an updated significant incident report sent from CJFS headquarters at 9:26 p.m. on March 4th.⁵⁴² NDHQ was thus informed promptly, and concerns were expressed because the Somalis had been shot in the back while fleeing from the Canadian compound, with one Somali dead and one Somali wounded to an unknown extent. NDHQ questioned the circumstances of the shootings and asked for additional information immediately. In our view, the evidence shows that actions were taken at NDHQ to conceal the nature of the incident from the media and the Canadian public.

An attempt was made at the level of in-theatre command to correct the impression that they had given incorrect orders concerning the Rules of Engagement and had created an environment that permitted an excessive use of force. The “damage control” team in Somalia distorted and misrepresented facts about the March 4th incident to NDHQ and held back relevant and incriminating information from the Canadian media. NDHQ received the March 5th situation report, followed by the March 6th report correcting errors in the March 5th report. This alteration of important information should have rung alarms bells at NDHQ.

However, a parallel “damage control” effort was being orchestrated at NDHQ to obscure the facts of the March 4th incident to avoid bad publicity before the upcoming leadership campaign of the Minister of National Defence. NDHQ’s “damage control” approach was also apparent in its messages to Somalia immediately after the incident. The “spin” had taken on a life of its own within 24 hours of the incident by the actions of the chain of command in Somalia and at NDHQ.

The first sign that NDHQ was concerned was when Maj Armstrong was awakened by Pte MacLeod at 1:30 a.m. on March 5th, 1993 to speak with Capt Kyle, Operations Officer at CARBG Headquarters, about Mr. Aruush’s

fatal wounds.⁵⁴³ A short time later, Pte MacLeod woke Maj Armstrong again to inform him that there was another request, this time from CJFS Headquarters in Mogadishu, for information about the wounds.⁵⁴⁴ Maj Armstrong saw these requests as unusual, considering the time of night and the fact that Maj Armstrong had already informed his superior about the nature of the wounds. We agree.

The evidence reveals that Maj Armstrong first contacted Capt Kyle at CARBG Headquarters in the early morning hours of March 5th. When Maj Armstrong asked Capt Kyle why the wound information was needed immediately, he was told that it was because there was a "damage control operation under way".⁵⁴⁵ The request was not from CARBG headquarters, but originated from Maj Moffat at CJFS Headquarters, who had been tasked by NDHQ to conduct "damage control" operations.⁵⁴⁶ Maj Armstrong told Capt Kyle that the shooting was a murder and "you don't hide this type of thing."⁵⁴⁷ This was CARBG Headquarters' first indication of the allegation, but nothing was done to address the doctor's concerns.

At 2:10 a.m. Maj Armstrong phoned CJFS Headquarters and spoke with Maj Parsons. Maj Armstrong stated again his concerns that this was a criminal matter, not a public affairs matter, and that the death had been a homicide.⁵⁴⁸ Maj Parsons told Maj Armstrong that the "damage control" talk was coming from NDHQ. NDHQ wanted to know what had actually gone on and had concerns that the news media might have found out that Mr. Aruush had been shot in the back, since they were starting to ask questions about the incident.⁵⁴⁹ Although Maj Parsons' operations log entry 567 indicates only that the deceased had been shot from an unusual angle,⁵⁵⁰ it is our firm belief that Maj Parsons understood the allegation being made by Maj Armstrong.⁵⁵¹ We have seen that Maj Moffat was concerned about controlling the flow of information about any instance in which deadly force was used.⁵⁵² The fact that Maj Parsons noted in the log that Maj Moffat was to be notified indicates that he considered it a serious allegation.

It is clear from the evidence that this was CJFS Headquarters' first notice of Maj Armstrong's allegation. It is also clear from the evidence that NDHQ had gone into panic mode over the incident. If not, why was there "damage control" talk coming from NDHQ? Why was NDHQ so worried about the media uncovering the truth? NDHQ was very much aware from the significant incident report that something serious had taken place and that immediate answers were required about the lawfulness of the incident. The fact that NDHQ was already concerned about the media adds to the impression of a cover-up attempt.

NDHQ went into full “damage control” mode when it received an updated significant incident report from CJFS Headquarters indicating that Col Labb   planned to hold a media briefing on March 5th.⁵⁵³ NDHQ responded immediately with an “Exclusive for Col Labb  ” message stating that the Deputy Chief of the Defence Staff was “very uncomfortable” with Col Labb   talking to the press about the March 4th incident and that NDHQ was “excited” about the information concerning the entry and exit wounds on Mr. Aruush’s body.⁵⁵⁴ It also indicated that Col Labb   should be “quote sensitive unquote to the extent and nature of minister’s concerns over last shooting incident”.⁵⁵⁵ Finally, the message indicates for the first time that NDHQ was worried about the application of the Rules of Engagement by Recce Platoon members. According to Col Labb  ’s evidence, which we find perplexing, the envelope containing this urgent, ‘silent hour’ message from NDHQ regarding the media briefings was thrown into his satchel; he did not open it until sometime after he returned to HMCS *Preserver* on the evening of March 5th.⁵⁵⁶

The message from NDHQ to LCol Mathieu asked for answers, because the March 4th incident had already caused “significant interest within NDHQ”. It also noted that the DCDS had “concerns with incident and media coverage”. The message was received at 6:25 a.m. on March 5th. It was LCol Mathieu’s response to this message that gave NDHQ the first indication of flaws in the understanding of the Rules of Engagement, as LCol Mathieu stated that the attempted breach of the wire was to be considered a hostile act.⁵⁵⁷ It was this message that created a sense of urgency and a need for secrecy at NDHQ.

In-theatre “damage control” began with Col Labb  ’s media briefings on the morning of March 5th.⁵⁵⁸ Without consulting NDHQ, Col Labb   authorized WO Haines in Belet Huen to call Col Peck, U.S. UNITAF public affairs officer in Mogadishu, at 7:00 a.m. on March 5th for information that might situate the March 4th incident in the context of other shootings that had taken place.⁵⁵⁹ The requested information was received in Belet Huen from Col Peck at 7:30 a.m.⁵⁶⁰

Col Labb  ’s phone briefings to journalists in Canada were guided by Capt Rainville’s statement and diagram of the March 4th events, the March 4th significant incident report, and other documents prepared by Capt Kyle. It was during these media briefings that Col Labb   told reporters that the Somalis might have been “possible saboteurs”. Col Labb   knew at the time that there had been no prior sabotage activities.⁵⁶¹ In fact, had he suspected that the men shot by the Recce Platoon were there to sabotage Canadian installations, he was obligated under CFAO 22-3, Article 7a, to ask the Special Investigation Unit to investigate the matter.⁵⁶² The fact that he did not calls into question whether he actually believed that the Somalis

were “possible saboteurs”. It is not clear exactly what Col Labbé’s purpose was in mentioning “possible saboteurs”, but what is clear is that following this briefing, media interest in the incident dropped off almost completely for a period of six weeks.⁵⁶³

Meanwhile, at the March 5th orders group in Belet Huen, an order from Col Labbé was passed on that media requests for information were to be referred to a captain or higher-ranking officer. This meant that people under the rank of captain would not be allowed to release information to the media.⁵⁶⁴

As a result of a phone conversation on March 5th with the Deputy Chief of the Defence Staff, VAdm Murray, and Cmdre Cogdon, Col Labbé undertook to order LCol Mathieu to conduct a CO’s investigation of the incident.⁵⁶⁵ It would appear that it was only after this conversation that Col Labbé opened the envelope containing NDHQ’s message about holding a single-issue media briefing — the message that emphasized the need to be sensitive to the Minister’s concerns about the February 17th shooting.⁵⁶⁶ Col Labbé told VAdm Murray, Cmdre Cogdon, Cdr Keenliside and LCdr Bastien that a CO’s investigation was under way and that he was satisfied with the application of the Rules of Engagement. Although he did not mention this, Col Labbé’s only source of information about this was Capt Rainville’s statement. We believe that NDHQ was not aware at this time that the CO’s investigation had not yet begun.

We believe that Col Labbé then contacted Maj Moffat at CJFS Headquarters to comply with Ottawa’s wishes. At 2:42 p.m. on March 5th, Maj Moffat contacted CARBG HQ and requested that personal statements be taken from the members of the Recce patrol.⁵⁶⁷ Almost two hours later, a second message was sent from Maj Moffat to CARBG HQ under Col Labbé’s identification code, ordering LCol Mathieu to conduct a CO’s investigation and giving him a 24-hour deadline.⁵⁶⁸ If the CO’s investigation began on the morning of March 5th, as claimed, why did the two messages have to be sent that afternoon?

Col Labbé told Maj Moffat that he wanted to correct the errors in the March 5th situation report concerning the Rules of Engagement. Col Labbé said explicitly that he would personally draft the commander’s evaluation portion of the March 6th situation report to correct Maj Moffat’s Rules of Engagement interpretation errors with regard to the “hostile act possibly to conduct sabotage” and the statement that “any Somali attempt to breach the wire must be considered a hostile act and dealt with according to the Rules of Engagement”.⁵⁶⁹ This is important, because Maj Moffat’s March 5th situation report used LCol Mathieu’s comments as its guide. Col Labbé’s response was to “tear a strip” off Maj Moffat, rather than determine the source of Maj Moffat’s misinformation.⁵⁷⁰

NDHQ's initial questions about the circumstances of the shootings should have prompted a Military Police investigation to clear up the issues. They did not. However, Col Labb   had obviously started thinking about the fact that an investigation would be needed, since he spoke with Col O'Brien on the HMCS *Preserver* on the evening of March 5th about the idea of using the U.S. CID for the investigation.⁵⁷¹

As we saw earlier in this chapter, Col Labb   requested major changes in Capt Hope's initial summary investigation report, including paragraphs 8, 9, and 13. According to LCol Watkin, the JAG officer whose subsequent legal review of the report was filed with us, Col Labb  's reworking of Capt Hope's report amounted to an attempt to demonstrate a more hostile environment than actually existed at Belet Huen and a solid knowledge of the Rules of Engagement on the part of Recce patrol members. In effect, the CO's investigation report was being managed.⁵⁷²

Although Capt Hope's report makes no mention of them, both Maj Armstrong's medical report and CWO Jackson's report were attached as appendices. Col Labb   conducted a thorough examination of the complete report and therefore came across Maj Armstrong's "dispatch" statement and CWO Jackson's impressions of the incident.⁵⁷³ If Col Labb   did not consider the word "dispatch" serious, he was certainly made aware of this during his meeting with Capt Philippe. It was Capt Philippe who, on reviewing Capt Hope's report, told Col Labb   that he had concerns arising from the report, including the word "dispatch", which indicated to him that foul play might have been a factor.⁵⁷⁴ As a result of this conversation, supplementary questions for the Recce Platoon were put together to clarify any misleading or incomplete concepts, but Col Labb   did not seek follow-up clarification with Maj Armstrong.⁵⁷⁵ If that was the intention of the supplementary questions, why do they appear very carefully framed to increase the perception and apprehension of a threat, to create a misleading picture of the climate surrounding the shooting, and to justify the use of deadly force in these circumstances? Why was Maj Armstrong not consulted or questioned? Why did Col Labb   not take Capt Philippe's advice to clear up the matter through a Military Police investigation? Members of the Recce Platoon saw Col Labb  's supplementary questions as an effort to justify the actions of March 4th.⁵⁷⁶ Col Labb  's report was sent to NDHQ on March 23rd, but the written answers to the supplementary questions were not available until March 29th.⁵⁷⁷ LCol Mathieu testified that no answers were given orally to Col Labb   before the report was completed.⁵⁷⁸ What was the point of the supplementary questions if they were not used to complete Col Labb  's report?

Col Labb   decided to write his own report for NDHQ, notwithstanding the fact that time was apparently a major factor. As LCol Watkin's legal review noted, Col Labb  's report suggested, *prima facie*, an attempt to mislead NDHQ by attempting to exaggerate the threat that existed on March 4th including "the overall reliance on other unrelated attacks on coalition forces to justify the use of force", "speculation on threats to personnel safety", and "the post incident discovery of a knife to justify the use of force when no weapons were seen".⁵⁷⁹ As well, Col Labb   refers to the fact that a weapon was found in a nearby hut, giving the incorrect impression that this was related to the March 4th incident.⁵⁸⁰ Col Labb  's only concession that there may have been an "excessive use of force" by the Recce Platoon is buried amidst numerous attempts to justify its actions.

Col Labb  's report was sent by fax to NDHQ on March 23rd without the referenced documents. It was received by the JAG from VAdm Murray on March 24th. The report made no reference to Maj Armstrong's allegation or to CWO Jackson's report. The report also failed to include the CO's investigation report. These documents are critical to any evaluation of the incident, yet they were left out.

As LCol Watkin's legal review pointed out, Col Labb  's report contained only his own analysis, which was flawed and stridently supportive of the acts of the soldiers on the ground.⁵⁸¹ The report was also inconsistent about the understanding and application of the Rules of Engagement. It put forward a largely supportive and sympathetic view of the Recce Platoon's actions that created a misleading impression of the theft situation in Belet Huen. Col Labb  's report discussed concerns about the "loss of weapons, ammunition, high value items (NODLRs) and the wilful [sabotage] or indiscriminate damaging of high value assets (such as helicopters and engineering equipment)".⁵⁸²

LCol Watkin's legal review of April 14th expressed grave concerns about the shootings.⁵⁸³ According to the legal review, Col Labb  's report was based on unsupported and unwarranted allegations or suggestions of sabotage and threats to the Canadian compound, again to portray the shooting as justified under the Rules of Engagement.⁵⁸⁴

Once NDHQ requested the appendices to Col Labb  's report on March 25th, Col Labb   did not fax them, but hand delivered them on April 2nd. Though there was testimony about the reason for the hand delivery,⁵⁸⁵ we find that there is no appropriate explanation for why they were not also sent by fax.⁵⁸⁶

It must be noted that LCol Watkin's legal review points out that Col O'Brien advised him not to look too deeply into what was being reported.⁵⁸⁷ This is yet another indication of a systemic "damage control" approach to the incident.

In this regard, we see a dismaying degree of inertia and complacency and a ‘go slow’ philosophy in the chain of command at NDHQ and in Somalia. The parallel actions of officers in Somalia and officers and officials at NDHQ leave the impression of a complex effort to conceal information (“damage control”) and to mislead the media and the Canadian public.

The Lack of Response

The only concession in the March 23rd report to NDHQ was that “excessive force” may have been used by the Recce Platoon.⁵⁸⁸ This requires further consideration. The Rules of Engagement were issued by the Chief of the Defence Staff as a command order. Such an order had to comply with Canadian law. Under Canadian law, the use of excessive force resulting in a death is unlawful. Therefore, any deadly force used that exceeds what is allowed under the Rules of Engagement must also be seen to be unlawful. We therefore believe that if the March 4th incident raised any question whatsoever about the use of excessive force, a Military Police investigation should have been launched immediately.

Even if we accept that the only problem with the March 4th incident concerned the Rules of Engagement and excessive force — which we do not accept — efforts to deal with the problem were negligible. There were clear and unequivocal indications of a serious misunderstanding of the Rules of Engagement, from the senior level of the CARBG to the soldiers in the field, and nothing was done by NDHQ or by CJFS Headquarters to address this misunderstanding.

The lack of adequate response and follow-up to the alleged cause of the incident must be questioned. The in-theatre command knew that there was a problem with the Recce Platoon’s understanding of the Rules of Engagement. NDHQ showed its concerns about Rules of Engagement interpretations in their message to the Commanding Officer of the CARBG on the morning of March 5th, and it was the CO’s response to NDHQ and CJFS Headquarters’ March 5th situation report that demonstrated a clear lack of understanding of the Rules of Engagement.

However, as LCol Watkin’s report of July 25, 1993 indicates, NDHQ’s concerns were allayed by the response from senior officials in Somalia that there were no problems with the Rules of Engagement, they were adequate and understood by CARBG personnel.⁵⁸⁹ According to the chain of command in Somalia, the Rules of Engagement problem had been resolved

quickly. This in itself is surprising, since any corrective measure with respect to the Rules of Engagement would have had to be disseminated throughout the chain of command to every soldier and be fully understood by them. We believe that this overly reassuring information was provided to NDHQ to allay panic and that NDHQ, without adequate follow-up, simply accepted it. However, if comprehension of the Rules of Engagement was the root of the problem, why is there no evidence of substantial meetings or training to improve understanding of the Rules of Engagement following the incident? Why were there not greater efforts by NDHQ to confirm that the Rules of Engagement were being interpreted and applied correctly?

Little was being done in Somalia to correct the problem. LCol Watkin was surprised that no one had asked Capt Philippe to lecture on the Rules of Engagement.⁵⁹⁰ Capt Philippe in fact offered his services to LCol Mathieu, through Col Labb  , after the March 16th incident and was never taken up on it.⁵⁹¹ Nor did we find any indication or evidence of expanded Rules of Engagement training in Somalia as a result of the March 4th incident.

The only instance of follow-up was at the orders group of March 8th. It was there that LCol Mathieu discussed for the first time the concept of "disengagement".⁵⁹²

As for disciplinary action in the wake of the incident, it was Cpl Smetaniuk who stated in testimony that he was never reprimanded for leaving his weapon unattended in the field.⁵⁹³ Notwithstanding the conclusion in Col Labb  's report that excessive force may have been used during the March 4th incident, no member of Recce Platoon was ever reprimanded by the Commanding Officer of the CARBG or the Commander CJFS for using excessive force.

Misinterpretation of the Rules of Engagement continued throughout the deployment. In the course of a Military Police investigation, Capt Oldham, second in command of the Royal Canadian Dragoons, said on May 3, 1993:

For about a week they had been experiencing problems with youths infiltrating the concertina wire surrounding the compound. The direction given by the Battle Group Headquarters was that anyone in or escaping the compound was to be considered in possession of a stolen weapon and therefore could be shot.⁵⁹⁴

We find no evidence in this Military Police report that the interpretation of the Rules of Engagement given at the January 28th orders group had been changed.

In addition, LCol Mathieu's in-theatre field notes for May 23rd also contain the following entries: "seems to be some confusion on Rules of Engagement ref looters. Review Rules of Engagement with emphasis on escalation,

graduated response, deescalation, proportionality and necessity and min force to do the job only shot if there's intent" and "2CDO: Brief all tps on Rules of Engagement."⁵⁹⁵

In fact, it was on May 23rd that the Rules of Engagement problem was brought to the attention of NDHQ. A message was sent from MGen de Faye, who chaired the Phase I Board of Inquiry into the Somalia deployment, to the Deputy Chief of the Defence Staff, expressing "grave concerns" about the Rules of Engagement and the CARBG, identifying specifically the issue of using deadly force against looters, and stating that the continuing "view that fleeing looters can be engaged because they are carrying arms, ammo...but are not exhibiting hostile intent constitutes a de facto amendment to the Rules of Engagement".⁵⁹⁶ In our view, there was a clear failure to respond appropriately to the Rules of Engagement issue on the part of officers in Somalia, and NDHQ failed to exercise adequate supervision to ensure that problems in the interpretation of the Rules of Engagement and their application to looters were addressed.

At NDHQ, LCol Watkin's legal review was made available on April 14th, but there is no evidence that NDHQ did anything to resolve the problems identified in it. Their solution was to hope that the problems would just disappear. The problems did not disappear.

In the meantime, a cover-up of the events of March 4th was continuing. Equally disturbing, fundamental problems were not being adequately disclosed throughout the chain of command in Somalia and were therefore not being resolved by the chain of command in a timely fashion.

Maj Armstrong's allegations were deliberately ignored at NDHQ and in Somalia for more than a month, until he courageously brought up the subject again on April 14th in Nairobi. The Military Police investigation of the March 4th incident began only after Maj Armstrong slipped a note, alleging the suspicious death,⁵⁹⁷ under the door of LCol Tinsley, a JAG legal officer who had accompanied the MP investigators sent to investigate the March 16th incident. At 8:04 p.m. Somalia time (that is, 12:04 p.m. Ottawa time) on April 14th, Maj Armstrong was interviewed by MWO Dowd of the Military Police. During the interview Maj Armstrong clearly and unequivocally alleged murder in relation to the March 4th incident.⁵⁹⁸

During the April 14th interview, MWO Dowd received a telephone call from "a general" in Ottawa.⁵⁹⁹ According to Maj Armstrong's testimony, MWO Dowd asked Maj Armstrong to leave the room while MWO Dowd had a private conversation for 5 to 10 minutes. MWO Dowd confirms in his report that he asked Maj Armstrong what he would do if his allegations were not taken

seriously. Maj Armstrong told MWO Dowd that he would do what was necessary, up to and including resigning his commission and going to the press, to have the March 4th incident investigated properly.⁶⁰⁰

Following the interview, MWO Dowd contacted the Director of Police Operations, Col MacLaren, at NDHQ to report the allegation and informed him that an investigation into the March 4th incident was to begin. Col MacLaren then informed Col Wells about the interview.

LCol Tinsley also contacted NDHQ and alerted the Judge Advocate General to Maj Armstrong's note. It was then that an "excited" Capt (N) Blair, accompanied by Cmdre Cogdon, informed VAdm Murray about Maj Armstrong's statement, which was suddenly "found" in Capt Hope's summary investigation report. VAdm Murray also received the results of LCol Watkin's legal review of Col Labb 's report on the same day, which expressed grave concerns about the shootings and stated that a Military Police investigation was required immediately.⁶⁰¹ At approximately 2:00 p.m.(Ottawa time) on April 14th, VAdm Murray directed Col Wells to send the Military Police to investigate the March 4th shootings.

CONCLUSION

It is our view that it was only as a result of Maj Armstrong's interview in Nairobi that NDHQ approved the Military Police investigation of the March 4th shootings. The issue was then outside the chain of command and could no longer be controlled by it. The March 4th incident was the direct result of poor leadership and decision making in theatre and at NDHQ. The result was the tragic and unwarranted killing of Mr. Aruush. Actions and inaction on the part of the chain of command were designed to ensure that it maintained control of information about the incident, to obscure the nature of the incident, and to downplay its seriousness.

The belated and self-serving response of the chain of command to the administrative, operational, and disciplinary problems manifested in the March 4th incident was weak, inadequate and ultimately unjustifiable. It also fell far short of the professionalism and leadership that Canadian soldiers deserve and the Canadian public expects. Integrity and courage were superseded by personal and institutional self-interest. It is our firm belief, based on the evidence adduced before us, that the failure of the chain of command immediately to address and remedy the problems revealed by the March 4th incident possibly set the stage for the death of Shidane Arone 12 days later.

FINDINGS

- We find that the official explanation of the incident of March 4, 1993 is not supported by the evidence adduced at the hearings.
 - (a) The shooting in the back of two fleeing, unarmed Somali civilians was a use of force clearly in excess of what was permitted under the Rules of Engagement.
- We find that members of the Canadian Airborne Regiment Battle Group were experiencing increasing frustration as a result of the austerity of their living conditions, repeated instances of theft of personal items, lack of a redeployment date, and a lack of training in and sensitivity to Somali society and culture.
 - (a) The response of the chain of command in Somalia to this situation was wholly inappropriate. Rather than increasing training in cultural awareness and the Rules of Engagement, so as to ease tension and frustration and underline the need for restraint, the chain of command issued a less restrictive interpretation of the Rules of Engagement that significantly increased the likelihood of the use of deadly force.
- We find that the task assigned to the Reconnaissance Platoon was to augment the security of the Field Squadron of Engineers compound and did not explicitly encompass the Helicopter compound.
 - (a) The mission was subsequently modified by the Recce Platoon commander to one designed to capture infiltrators using means up to and including deadly force.
 - (b) An inexcusable lack of command oversight permitted this modification to take place.
 - (c) The mission as planned by the Recce Platoon was inappropriate in the circumstances, as several other less aggressive means were available that offered a reasonable chance of deterring infiltrators.
 - (d) The available alternatives to increase security of the Engineers compound included erecting a lighting tower and a surveillance platform, using para-flares to warn off infiltrators, bulldozing an area directly outside the perimeter, and increasing foot patrolling inside and outside the perimeter.
 - (e) The lighting and surveillance alternative means of deterrence were offered to and declined by the Recce Platoon commander, and there was no justification for the aggressive measures taken on March 4, 1993.

- We find that the mission was poorly planned, executed and supervised.
 - (a) The details of the altered mission plan to apprehend infiltrators were not reported up the chain of command before the mission, nor were they fully disclosed after the mission. Nor did the chain of command concern itself with how increased security would be provided.
 - (b) Highly questionable tactics were used, such as the putting out of food and water to entice Somalis to approach the Canadian installation. We find that the use of this tactic did not constitute a military deception plan as outlined in Section 27(C) of the Rules of Engagement.
 - (c) The three detachments were placed in a way that produced overlapping arcs of fire converging on the location of the food and water that had been set out.
 - (d) Inappropriate instructions were issued to the members of the Recce Platoon to effect the capture of infiltrators, thereby making the use of deadly force inevitable and the only effective means of capture.
- We find no credible evidence to support the ‘sabotage theory’ and no evidence that sabotage was ever committed or even threatened against Canadian installations at Belet Huen. We find that the sabotage theory was concocted after the fact to disguise a clear instance of the use of excessive force.
 - (a) The pretext given for the fear of sabotage, i.e., the theft of a fuel pump, is not credible.
 - (b) The treatment of the captured Somali was not consistent with how a captured saboteur would be handled.
 - (c) The two Somali men, Mr. Abdi Hunde Bei Sabrie and Mr. Ahmed Afraraho Aruuush, did not approach the Canadian installation in a military fashion, did not perform a “clover-leaf recce”, did not proceed in a “bounding over-watch”, and did not “leopard crawl” toward the Helicopter compound. We find that they posed absolutely no threat whatsoever to Canadian troops or installations apart from possible thievery.
 - (d) Mr. Abdi and Mr. Aruuush did not go north of the position of Detachment 63. We find that they did not conduct a reconnaissance of the Helicopter compound for ten minutes.
 - (e) Mr. Abdi and Mr. Aruuush did not breach the wire at the Helicopter compound, nor did they approach any closer than 100 metres from the Helicopter compound.

- (f) There was no evidence of fresh razor cuts from the concertina wire surrounding the compound on either of the two Somalis when they were examined shortly after the incident.
- (g) The two Somalis were unarmed except for one ritual knife, which was not produced by either man during the entire incident.
- (h) No hostile act was committed or hostile intent demonstrated that justified resorting to the use of force, let alone deadly force.
- (i) There was no confusion among Recce Platoon members surrounding the shootings, as the two Somalis had been under constant observation for 15 minutes, and no firearms had been seen in their possession.
- We find that the shooting of Mr. Aruush and Mr. Abdi did not result from any perceived threat, but rather that it was intended to accomplish their capture. Thus we find that the use of such force was not permitted under the Rules of Engagement.
 - (a) There was no evidence that the concept of 'disengagement' had ever been explained to the soldiers, and in this respect there was a serious failure of leadership and a lack of concern on the part of the chain of command for the lawful conduct of operations.
- We find that Mr. Abdi and Mr. Aruush were shot in the back while fleeing, having clearly broken off any activity that might have been interpreted as a hostile act or hostile intent. This being the case, they should have been allowed to flee.
 - (a) Maj Armstrong's hypothesis that Mr. Aruush was wounded, lived for a few minutes, and then was finished off (or executed) at close range cannot be either confirmed or refuted conclusively by the reports of the ballistics and forensic experts.
 - (b) Mr. Aruush was shot the second time from within 50 metres away and most likely from much closer range.
 - (c) Contrary to what was claimed by some witnesses, the body of Mr. Aruush was located 20 to 35 metres from and south of the south-east corner of the Engineers compound. We therefore find that the shots from Detachment 64A were in the direction of the Canadian installations.
 - (d) In the period immediately after the shooting, the Engineers compound was left undefended for considerable periods. During this time command should have changed hands in the field three times, but did not.

- We find that the method chosen for investigating the incident was inappropriate, especially in view of the obvious conflict of interest in which the chain of command found itself.
 - (a) Only a cursory investigation was performed by an unqualified officer with no experience in carrying out investigations into matters involving possible criminal conduct.
 - (b) The scene of the shootings was not preserved, no physical evidence was collected, the available and relevant witnesses were not interviewed, and no critical analysis was conducted of the statements of the soldiers involved in the shootings.
 - (c) In the days immediately following the shootings, no ballistics tests were performed, nor was an autopsy conducted.
- We find that changes were ordered in the original summary investigation report, specifically to delete a reference to a questionable interpretation of the Rules of Engagement given by the chain of command on January 28, 1993. These changes also resulted in the report overstating the threat situation in order to provide a justification for the shootings.
 - (a) The summary investigation report findings were presented and accepted as resulting from a thorough investigation, even though this was not the case.
 - (b) The acceptance of these findings as final seriously inhibited further investigation of the shootings by allowing physical evidence to deteriorate, giving time for collusion potentially to take place among the individuals involved, and creating a situation in which command influence could play a part in the aftermath of the incident.
- We find, as the summary investigation concludes, that the mission carried out by the Reconnaissance Platoon on the night of March 4, 1993 was designed to send a strong message to would-be infiltrators that any attempt to penetrate the perimeter of Canadian installations would be met with gunfire.
- We find that Maj Armstrong made a clear allegation of murder in his medical report and subsequently to all levels of the chain of command in Somalia and that the chain of command failed to respond seriously to this issue.
 - (a) The shootings on March 4, 1993, resulting in the death of one Somali civilian and the wounding of another, as well as the circumstances of these shootings, were plainly suspicious and should have been, without any hesitation, the subject of an immediate Military Police investigation.

- (b) The Military Police were not called in to investigate the shootings until almost six weeks after the incident, when all relevant evidence had disappeared or deteriorated and the potential to conduct a proper police investigation had been seriously jeopardized.
- We find that the flow of information was being controlled by the chain of command in Somalia and at National Defence Headquarters and that the incident was misrepresented to the media, the effect of which was to limit media scrutiny of the incident.
- We find that National Defence Headquarters knew, as of the night of the incident, of the seriousness and questionable lawfulness of the shootings.
 - (a) Rather than ordering a thorough investigation of the incident by the Military Police, NDHQ attempted instead to limit and control the potential damage that might result from the incident by conducting a “damage control” operation.
 - (b) By taking this approach, the chain of command showed poor judgement and a lack of leadership.
 - (c) The chain of command did not take adequate steps to address and remedy the serious misunderstanding of the Rules of Engagement that was evident in the March 4th shootings; this misunderstanding persisted throughout the deployment of the CARBG in Somalia.
- We find that the chain of command’s response to the administrative, operational, and disciplinary problems manifested in the March 4th incident was weak, untimely, inadequate, self-serving, unjustifiable and unbecoming the military leadership that Canadian soldiers deserve and the Canadian public expects. From an initial damage control approach, through subsequent distortion and suppression of relevant or incriminating information, and through inaction when positive action was required, the chain of command covered up its undeniable responsibility for the March 4th incident, avoided public accountability and possibly set the stage for a 16-year-old Somali boy to be tortured to death 12 days later.

THE VISUAL EVIDENCE

The following annexes consist of a series of diagrams with accompanying text; these were compiled during the course of the hearings to provide a visual representation of the evidence given. Witnesses were asked during their testimony to place pins on a scale model of the Field Squadron of Engineers compound and the Helicopter compound. The pins were placed in such a way as to indicate the location of certain structures and individuals, or to indicate directions in which certain individuals were moving at a given time. Composite representations of the relevant testimony concerning various items of interest have been assembled to assist readers in understanding the complex testimony given during the hearings.

ANNEX A

Witnesses who identified the location of the rock-pile

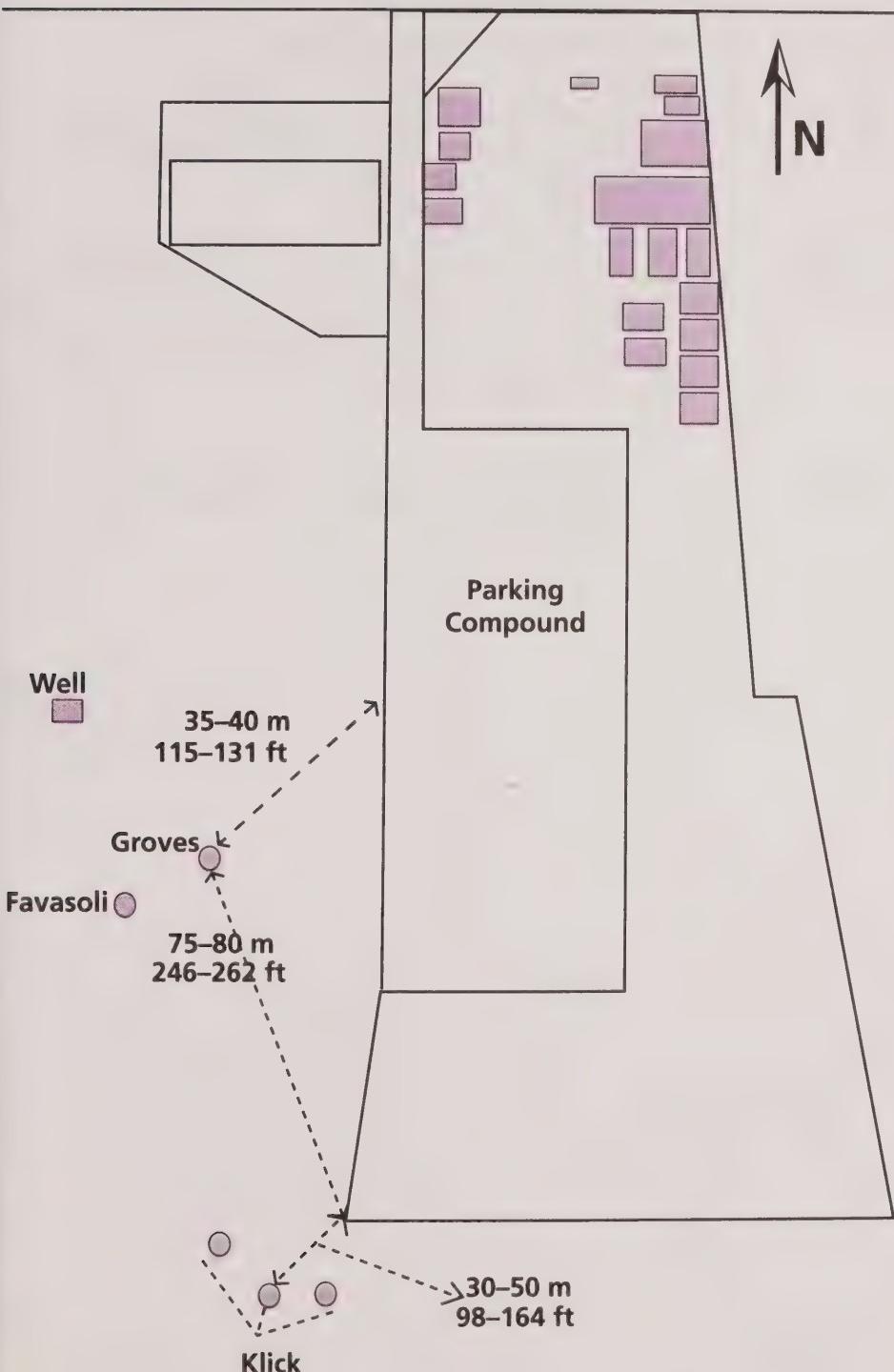
- Sgt Groves: Sgt Groves estimated that the rock-pile (a pile of rubble) was approximately 35 to 40 metres from the gate and 75 to 80 metres from the south-west corner of the compound (Transcripts vol. 112, pp. 22375–22376).
- Cpl Klick: Cpl Klick stated that the pile was approximately 30 to 50 metres from the south-west corner of the Engineers compound (Transcripts vol. 124, p. 25072).
He also estimated that the two Somali men were at the rocks for approximately two to four minutes (Transcripts vol. 124, p. 25080).
- Cpl Favasoli: Cpl Favasoli believed that the rock pile was in line with the southern portion of the Engineers compound and approximately 20 to 25 metres from the fence (Transcripts vol. 131, p. 26513).
He also estimated that the distance between the rock-pile and the well was approximately 20 to 25 metres. The distance from the rocks to the south-west corner of the Engineers compound was roughly 50 metres. He later stated that the location of the rock-pile should be moved 50 metres further north on the map (Transcripts vol. 131, pp. 26561–26562, and vol. 133, pp. 26894–26895).

Witnesses who identified the location of the rock-pile without placing a pin

- Maj Mansfield: Maj Mansfield recalled that there was a pile of rocks created when the Canadian soldiers bulldozed an orphanage. It was approximately 10 metres by 5 metres and was situated approximately 50 metres west of the Engineers compound, parallel to the bottom of the parking compound (Transcripts vol. 114, pp. 22874–22875).

LOCATION OF THE ROCK-PILE

Imperial Highway



ANNEX B

Witnesses who identified the location of the ammunition depot

- Sgt Groves: Sgt Groves estimated that the ammunition depot was located approximately 25 metres from the eastern and southern perimeter (Transcripts vol. 112, pp. 22345–22346).
- Cpl Klick: Cpl Klick recalled that the ammunition depot was within 5 to 20 metres of the food boxes and water jerrycans that had been set out, 15 to 20 metres from the southern fence and “approximately one-third of the way from the east side to the west” (Transcripts vol. 124, pp. 25041–25042).
- Capt (ret)
Rainville: Capt (ret) Rainville simply indicated the location of the ammunition depot without specifying distances (Transcripts vol. 145, pp. 29385–29386).

LOCATION OF THE AMMUNITION DEPOT



ANNEX C

Witnesses who identified the location of the supplies set out

WO Marsh:

WO Marsh estimated that the supplies were approximately 50 to 75 metres from the southern perimeter and 50 metres from the ammunition depot (Transcripts vol. 113, pp. 22595–22596).

Cpl Klick:

Cpl Klick recalled that the location where the supplies were left was within five to 10 metres of the armaments, 15 to 20 metres from the southern fence and “approximately one-third of the way from the east side to the west” (Transcripts vol. 124, pp. 25041–25042).

Capt (ret)

Rainville:

In his testimony, Capt (ret) Rainville indicated three locations where the supplies might have been set out.

He said they were between 25 and 50 metres from the southern perimeter of the Engineers compound, but when he measured the distance, he concluded that the pin had been placed at 15 metres, not 25 metres (Transcripts vol. 145, pp. 29386–29387, and vol. 146, p. 29802).

Where the supplies were located if they were about 25 metres from the southern perimeter of the Engineers compound (Transcripts vol. 146, pp. 29802–29804).

The northern limit of where the supplies could have been located if they were about 50 metres from the southern perimeter of the Engineers compound (Transcripts vol. 146, pp. 29802–29804).

Cpl Smetaniuk:

Cpl Smetaniuk did not remember when he became aware that there were supplies placed at the southern end of the Engineers compound (Transcripts vol. 137, pp. 27733–27734).

Cpl Roch Leclerc:

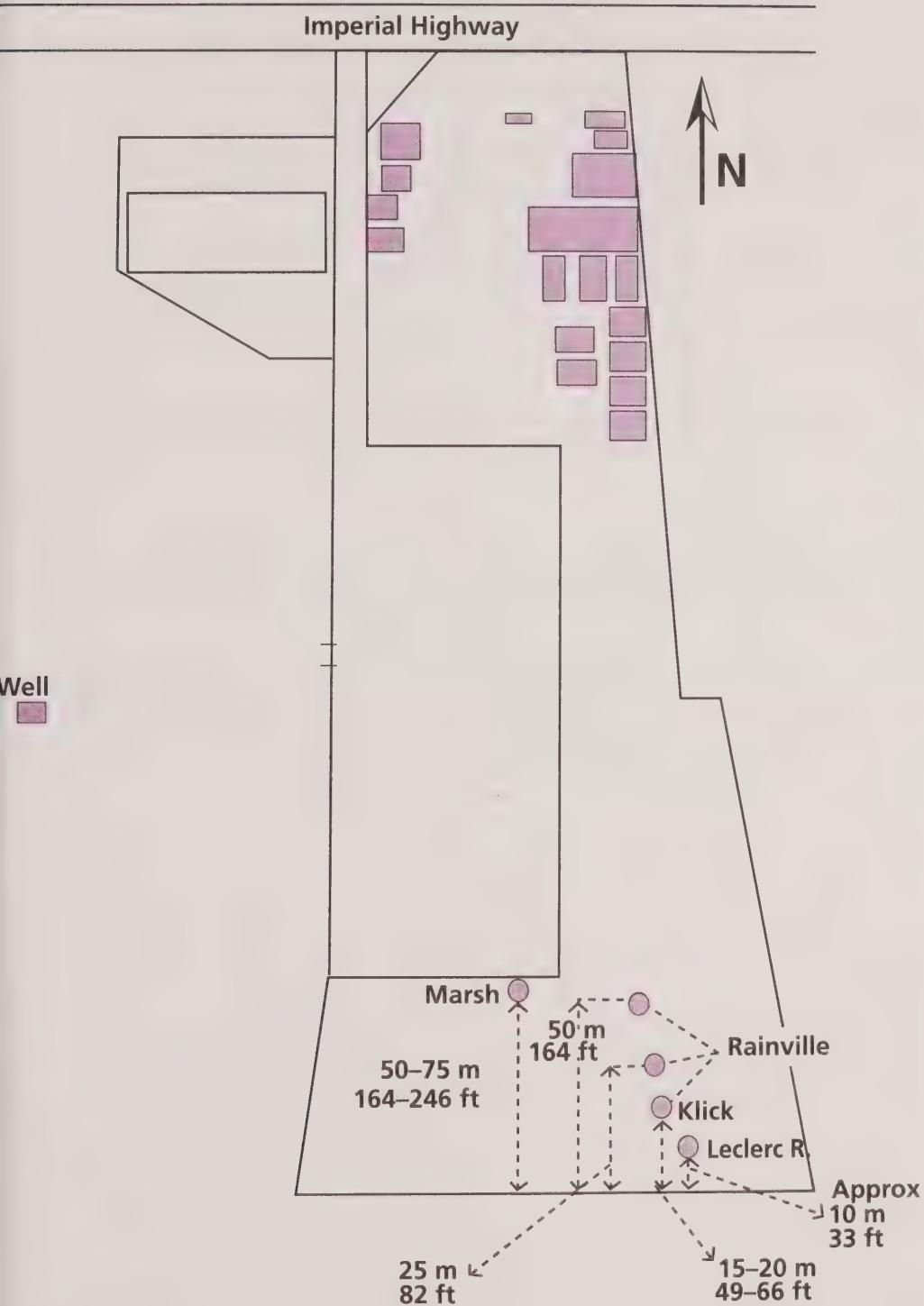
Cpl Roch Leclerc testified that the matter of the supplies had been discussed during the orders group. It was agreed that the supplies would be set out at the southern end of the Engineers compound, as a deception plan (Transcripts vol. 139, pp. 28209–28210).

Cpl Leclerc thought that the supplies had been set out about 10 metres from the wire, about one-quarter of the way along the fence from the south-east corner (Transcripts vol. 139, p. 28212).

MCpl Countway:

MCpl Countway believed the supplies were placed in the southern end of the compound (Transcripts vol. 141, p. 28688).

LOCATION OF THE SUPPLIES SET OUT



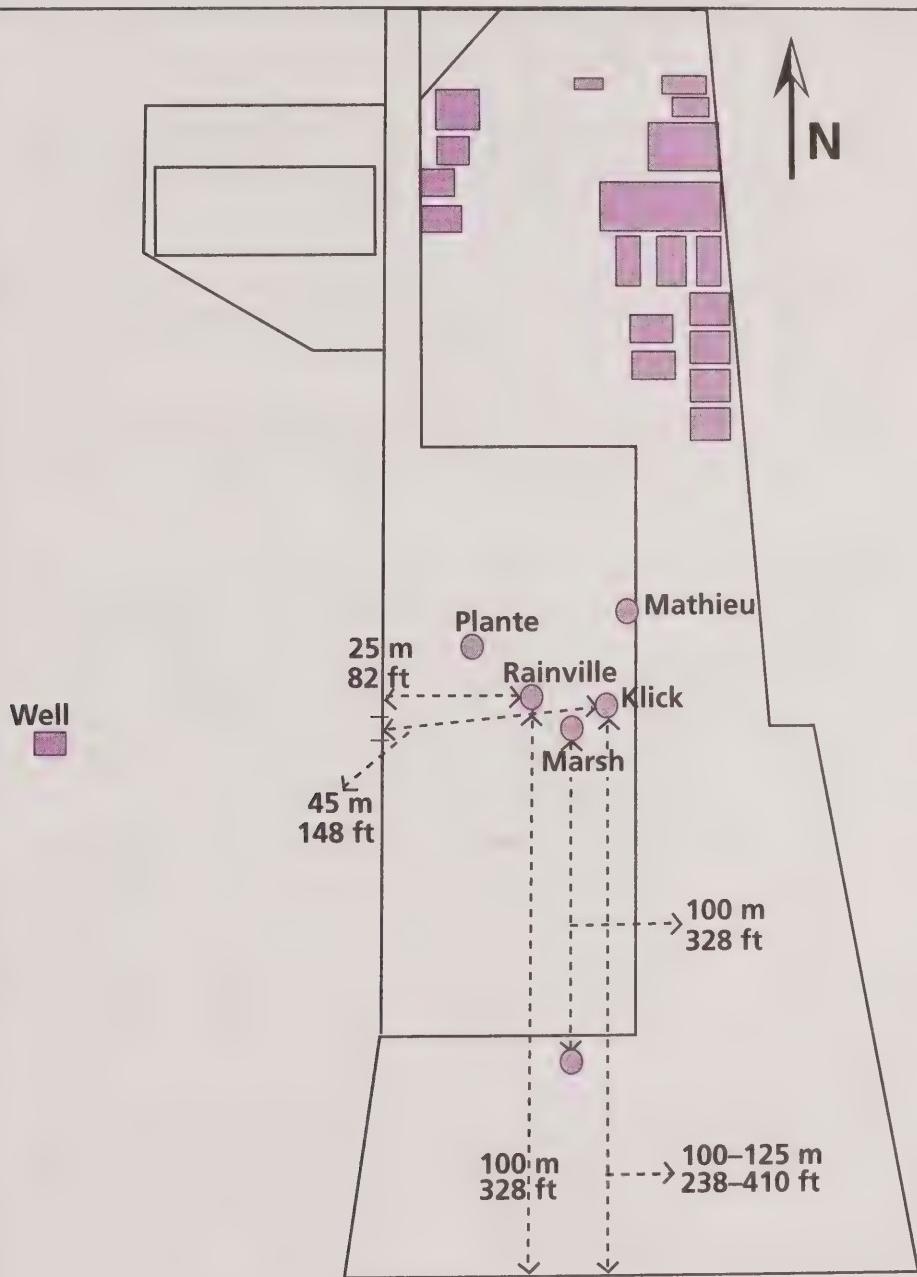
ANNEX D

Witnesses who identified the location of the truck and Detachment 69

- WO Marsh: WO Marsh stated that the truck was approximately 100 metres from the rations (Transcripts vol. 113, p. 22598).
- Cpl Klick: Cpl Klick maintained that the truck was facing west and was approximately 100 to 125 metres from the southern fence (Transcripts vol. 124, pp. 24949, 24952–24953) and 45 metres from the gate (Transcripts vol. 124, p. 25104).
- Sgt Plante: Sgt Plante stated that Detachment 69 was situated in a vehicle somewhere inside the Engineers compound (Transcripts vol. 134, p. 27180).
- Capt (ret)
Rainville: Capt (ret) Rainville estimated that Detachment 69 was 100 metres from the southern perimeter and 25 metres from the gate (Transcripts vol. 145, pp. 29386, 29417).
- LCol (ret)
Mathieu: LCol (ret) Mathieu stated that Detachment 69 was in one of the trucks inside the Engineers compound, but he was not able to specify the trucks in question (Transcripts vol. 171, p. 35124).

LOCATION OF TRUCK AND DETACHMENT 69

Imperial Highway

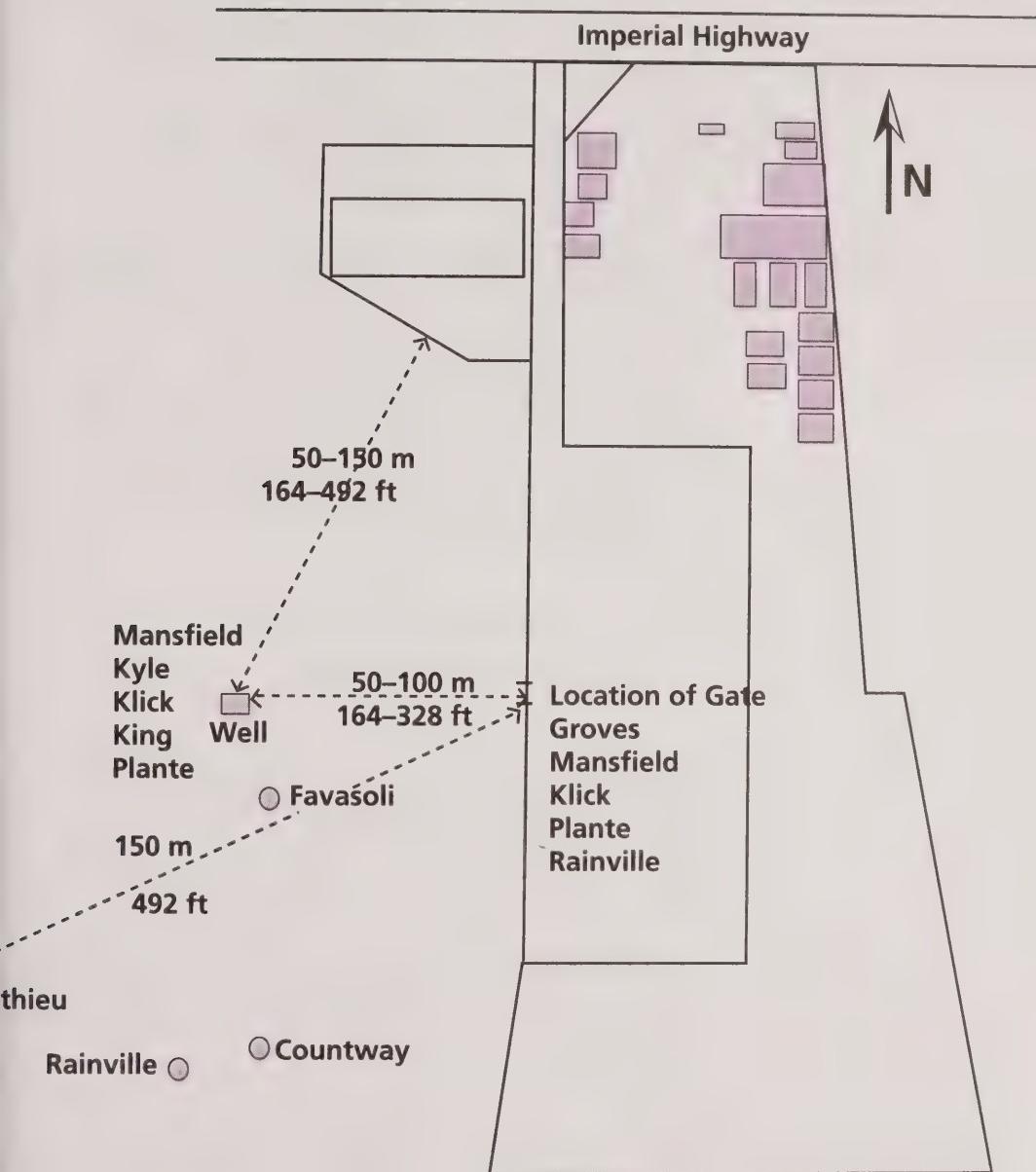


ANNEX E

Witnesses who identified the location of the well and Detachment 63

- Maj Mansfield: According to Maj Mansfield, the well was approximately 140 to 150 metres from the Helicopter compound and 80 metres from the gate (Transcripts vol. 115, p. 23104).
- Cpl Klick: Cpl Klick assumed the square block to be the well and stated that Detachment 63 was stationed at that location, which was directly in line with the gate (Transcripts vol. 124, p. 25054).
- Cpl King: Cpl King indicated the well as being the location where Detachment 63 established itself that night (Transcripts vol. 127, p. 25664).
- Cpl Favasoli: Cpl Favasoli's original description of the cistern was a rectangular concrete container, four feet wide by seven or eight feet long and about four feet deep with a concrete floor and small drainage holes. He stated that the well was approximately 20 to 25 metres from the rock-pile, between 50 and 100 metres from the fence, and roughly 100 to 200 metres from the Helicopter compound (Transcripts vol. 131, pp. 26511–26513, 26529–26530).
- Cpl Favasoli revised his description of the cistern after being questioned by Mr. Currie for the Government of Canada. After looking at the photograph and the model, Cpl Favasoli altered his testimony and said the well was approximately 50 metres north of his original assessment (Transcripts vol. 132, pp. 26668–26669, and vol. 133, p. 26894).
- MCpl Countway: MCpl Countway indicated the approximate location where Detachment 63 was initially positioned. He stated in his testimony that Detachment 63 later moved to the well; however, he did not recall how he received this information (Transcripts vol. 142, pp. 28768–28770).
- Capt (ret) Rainville: Capt (ret) Rainville indicated the spot where he thought Detachment 63 had been located (Transcripts vol. 145, p. 29386).

LOCATION OF WELL, DETACHMENT 63 AND GATE



LCol (ret)
Mathieu:

LCol (ret) Mathieu indicated the location where he thought Detachment 63 had positioned itself. He estimated that the well was parallel with the southern perimeter at about 150 metres from the fence (Transcripts vol. 171, pp. 35122–35123).

Witnesses who did not identify the location of the well and Detachment 63

Maj Kyle:

Maj Kyle described the location of Detachment 63 and the well as “the little square thing on the model”, directly west of the gate (Transcripts vol. 118, pp. 23682, 23992).

Sgt Plante:

Sgt Plante used a black marker to draw the well. According to his testimony, the well was between 50 and 100 metres from the perimeter of the Helicopter compound and 50 to 75 metres from the Engineers compound fence (Transcripts vol. 134, pp. 27098–27099).

Witnesses who identified the location of the gate

Sgt Groves:

During his testimony, Sgt Groves identified the location of the gate as being half-way down the west side of the Engineers compound and approximately 35 to 40 metres from the pile of rocks (Transcripts vol. 112, pp. 22368–22369 and p. 22375).

Maj Mansfield:

Maj Mansfield identified the location of the gate on the Engineers compound map and the aerial photograph. He believed that the gate was in line with the well and with the bottom of the parking lot (Transcripts vol. 114, p. 22886).

Cpl Klick:

Cpl Klick agreed the gate was located “about one-third from the southern portion of the gate” (Transcripts vol. 124, p. 25030).

Sgt Plante: During his testimony, Sgt Plante drew the well and indicated the location of the gate in the Engineers perimeter fence (Transcripts vol. 134, pp. 27087-27088).

He also stated that he heard the order to "Get them" coming from the direction of the gate in the Engineers fence (Transcripts vol. 134, p. 27234).

Capt (ret)
Rainville: During his testimony, Capt (ret) Rainville identified the location of the gate on the aerial photograph (Transcripts vol. 146, p. 29895).

Witnesses who did not identify the location of the gate

Maj Kyle: Maj Kyle understood that one of the detachments was directly west of the gate (Transcripts vol. 119, p. 23992).

ANNEX F

Witnesses who identified the location of Detachment 64A

- Cpl Klick: Cpl Klick maintained that Detachment 64A was outside his left arc of fire and was approximately 50 to 75 metres “but certainly no further than a hundred metres” from the south-east corner of the engineers compound (Transcripts vol. 124, pp. 24963, 25046, and vol. 125, p. 25019).
- Cpl Favaroli: Cpl Favaroli estimated that the distance from the Engineers compound to the location of Detachment 64A was approximately 100 metres (Transcripts vol. 131, pp. 26566–26567).
- Sgt Plante: Sgt Plant did not see them, but he believed that the detachment was located 30 metres from the south-east corner of the compound (Transcripts vol. 134, pp. 27264–27265).
- Cpl Smetaniuk: Cpl Smetaniuk claimed the distance was approximately 75 to 100 metres from the south-east corner of the compound (Transcripts vol. 137, pp. 27724 and 27740).
- Cpl Roch Leclerc: Cpl Roch Leclerc stated that the distance between the south-east corner of the Engineers compound and Detachment 64A was 40 to 60 metres (Transcripts vol. 141, p. 28554).
- MCpl Countway: MCpl Countway maintained that the distance was approximately 75 metres from the south-east corner of the compound (Transcripts vol. 141, p. 28703).
- Capt (ret) Rainville: Cpl (ret) Rainville thought that Detachment 64A was located about 100 metres from the south-east corner (Transcripts vol. 145, pp. 29386, 29538).
- LCol (ret) Mathieu: LCol (ret) Mathieu estimated that the distance between the south-east corner of the Engineers compound and the location of Detachment 64A was about 150 metres (Transcripts vol. 171, p. 35121).

Witnesses who did not identify the location of Detachment 64A

- Cpl King: Cpl King claimed that the approximate location of Detachment 64A was roughly 100 to 150 metres from the south-east perimeter (Transcripts vol. 130, p. 26381).

LOCATION OF DETACHMENT 64A

Imperial Highway



Plante	- 30 m (98 ft)
Leclerc R.	- 40-60 m (131-197 ft)
Klick	- 50-75 m (164-246 ft)
Countway	- 75 m (256 ft)
Smetaniuk	- 75-100 m (256-238 ft)
Rainville	- 100 m (328 ft)
Favasoli	- 100 m (328 ft)
King	- 100-150 m (328-492 ft)
Mathieu	- 150 m (492 ft)

Plante

Leclerc R.

Countway

Smetaniuk

Rainville

Favasoli

King

Klick

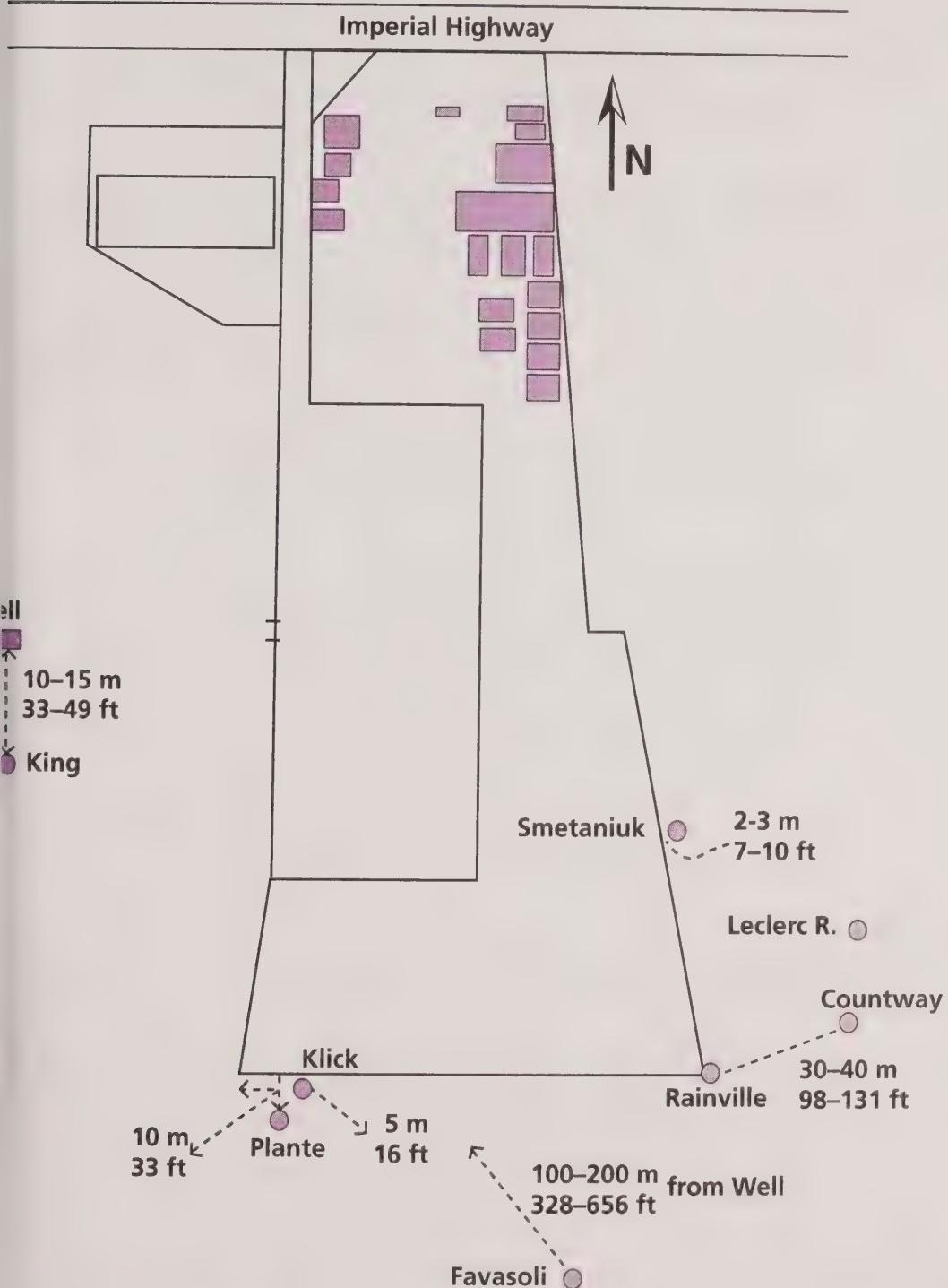
Mathieu

ANNEX G

Witnesses who identified the location where the Canadian soldiers first saw the two Somali men

- Cpl Lalancette: Cpl Lalancette testified that he saw the two Somalis leave the path and turn the corner, continuing toward the south-east along the perimeter fence (Transcripts vol. 122, pp. 24516–24517).
- Cpl Klick: Cpl Klick claimed that the two Somali men were approximately five metres from the wire and 10 metres from the south-west corner. He also claimed that the two Somali men were in that location for approximately three to 10 minutes (Transcripts vol. 124, pp. 25062 and 25070).
- Cpl King: Cpl King first saw the two Somali men in his starlight when he was at the well. The distance between the well and the two Somalis was approximately 10 to 15 metres (Transcripts vol. 127, p. 25711).
- Cpl Favasoli: Cpl Favasoli maintained that the distance between the well and the location where he first saw the two Somali individuals was approximately 100 to 200 metres. He also stated that the closest he saw them from the well was roughly 20 to 25 metres (Transcripts vol. 131, pp. 26540–26543).
He later stated that the location where he first spotted the two Somalis should be moved 50 metres further north on the map (Transcripts vol. 133, pp. 26894–26895).
- Sgt Plante: Sgt Plante stated that it was difficult to see the two men because of the intervening barbed wire (Transcripts vol. 134, p. 27110).
In his opinion, it was about 50 to 100 metres between the well and the pin marking the location of the two Somalis. He also testified that he disagreed with the testimony of Cpl Favasoli, who had specified the location of the Somalis as being much further south (Transcripts vol. 134, pp. 27112–27117).

**LOCATION WHERE THE SOMALIS
WERE FIRST SEEN**



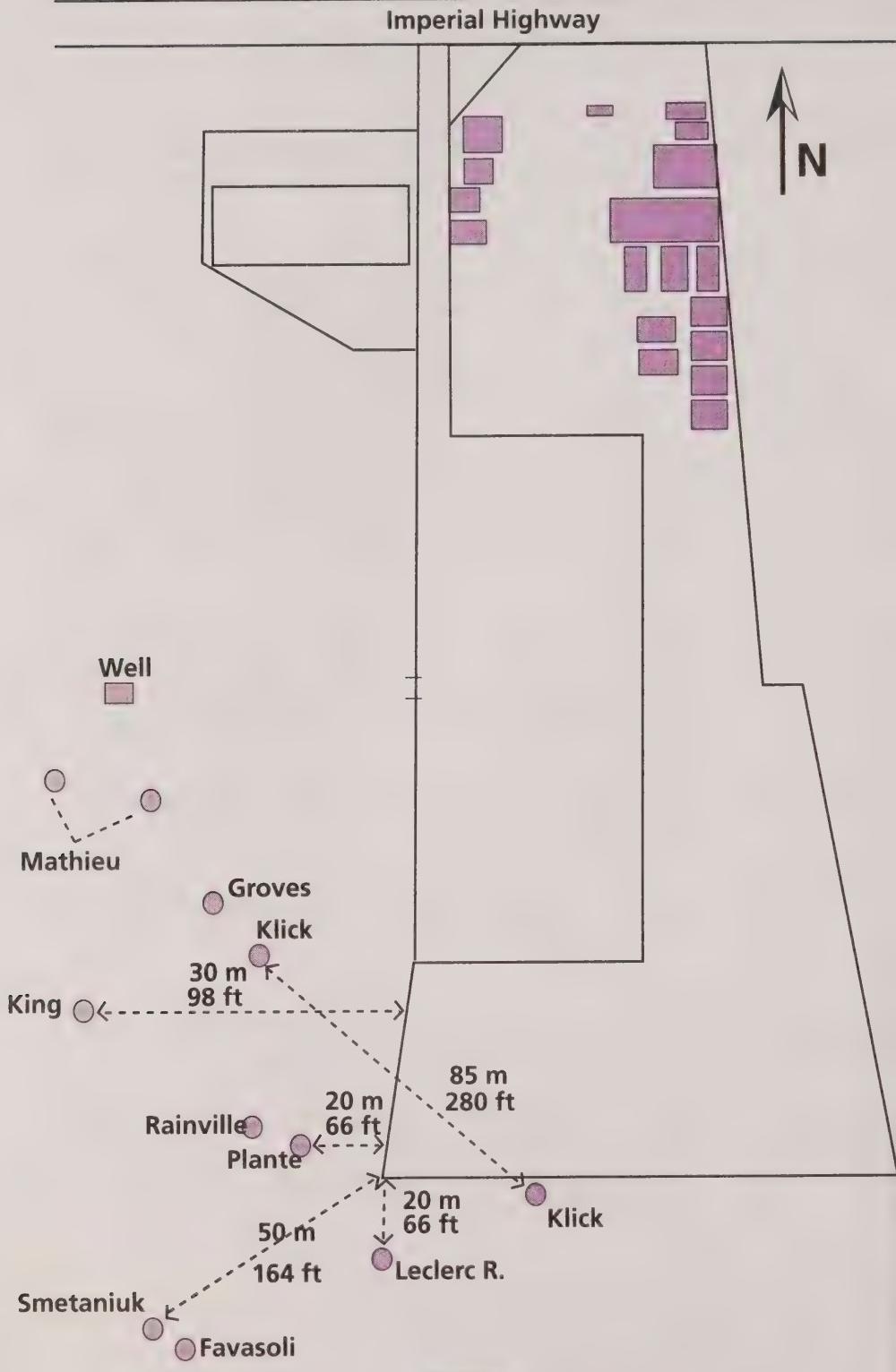
- Cpl Smetaniuk: Cpl Smetaniuk estimated that the spot where he first saw the two Somali men was approximately two to three metres from the fence (Transcripts vol. 131, pp. 27749–27751).
- Cpl Roch Leclerc: Cpl Leclerc saw the two Somalis for the first time at a distance of about 70 metres from the location of Detachment 64A (Transcripts vol. 139, pp. 28254–28255).
- MCpl Countway: According to MCpl Countway, the two Somalis were approximately 30 to 40 metres from the corner of the perimeter (Transcripts vol. 141, p. 28706).
- Capt (ret)
Rainville: Capt (ret) Rainville saw the two Somalis for the first time at the south-east corner of the Engineers compound (Transcripts vol. 145, p. 29385).

ANNEX H

Witnesses who identified the location of Mr. Abdi

- Sgt Groves:** According to Sgt Groves' testimony, the wounded man, Mr. Abdi, was approximately five metres from the rock-pile (Transcripts vol. 112, p. 22495).
- Cpl King:** Cpl King estimated that the location where the first Somali man fell to the ground was approximately 30 metres from the western fence of the compound and 40 to 50 metres from the well (Transcripts vol. 127, pp. 25709–25710).
- Cpl Favaroli:** Cpl Favaroli explained that he thought the spot was directly south of where he and Capt Rainville "met up in the run". He also stated that he thought the distance between the well and the location where the first Somali fell to the ground was approximately 50 metres (Transcripts vol. 131, pp. 26560–26562).
- Sgt Plante:** Sgt Plante estimated that Mr. Abdi fell about 20 metres from the fence. In his opinion, it was about 50 to 75 metres between where Mr. Abdi was when the warning shot was fired and where he fell after being wounded (Transcripts vol. 134, pp. 27201–27202).
- Cpl Smetaniuk:** Cpl Smetaniuk maintained that he saw a pool of white light and heard voices (Transcripts vol. 131, pp. 27794–27795).
- Cpl Roch Leclerc:** Cpl Leclerc thought that Mr. Abdi fell about 20 metres from the south-west corner of the Engineers perimeter (Transcripts vol. 139, p. 28317).
- Capt (ret)
Rainville:** Capt (ret) Rainville indicated the general location of the wounded man without stating a specific spot (Transcripts vol. 145, p. 29529).
- LCol (ret)
Mathieu:** LCol (ret) Mathieu placed two pins on his sketch: one where the first Somali, Mr. Abdi, had been hit (Transcripts vol. 171, p. 35125), and one where Mr. Abdi fell (Transcripts vol. 171, p. 35128).

LOCATION OF THE WOUNDED MAN, MR. ABDI



Witnesses who did not identify the location of Mr. Abdi

- Maj Kyle: Maj Kyle claimed that Mr. Abdi was near the rock-pile, which was approximately 80 metres north-west of the south-east corner and over 300 metres from Detachment 64A (Transcripts vol. 119, pp. 23993–23994).
- Cpl Lalancette: Cpl Lalancette testified that Mr. Abdi was about 10 to 15 metres from the south-east corner of the perimeter (Transcripts vol. 122, pp. 24551–24552).
- Cpl Klick: Cpl Klick claimed that “Mr. Abdi was wounded on the western side of the Engineers compound” and was out of his arc of fire (Transcripts vol. 125, pp. 25133, 25296–25297).
“In relation to the corner, I’d place Mr. Abdi quite a bit more north — south of the gate maybe one-third of the way from the bottom of the compound to the gate” (Transcripts vol. 125, p. 25302).
“From the pin I’ve placed in the centre of the western half to the pin indicating where I’ve located the flashlights, presumably the point where the Somali was wounded, we’re looking at a distance of 280 feet” (Transcripts vol. 126, p. 25554).

ANNEX I

Witnesses who identified the location where they saw Mr. Aruush running

Cpl Klick:

Cpl Klick indicated the area where the second Somali man ran, stopped and turned toward him and “faced in a north-west direction back toward where the noise and the activity and the lights were”. Cpl Klick estimated that the location was approximately five metres from the southern edge of the south-west corner (Transcripts vol. 125, pp. 25140 and 25142).

Cpl King:

Cpl King remembered seeing the second Somali running in that direction. He claimed that Mr. Aruush continued to run until he reached that point where he placed the pin (Transcripts vol. 127, pp. 25740–25741).

Cpl Favasoli:

Cpl Favasoli identified the locations of the Somali man who was running away with three different pins.

The first marks the spot where Cpl Favasoli claimed to be standing and guiding Sgt Plante and Cpl King toward Mr Aruush. He thought he was approximately 50 metres from the fence (Transcripts vol. 131, pp. 26577–26578).

The second pin indicates the location where Cpl Favasoli claimed Mr Aruush looked back at him. The distance between the fence and the Somali man was approximately 150 metres (Transcripts vol. 131, pp. 26563–26564).

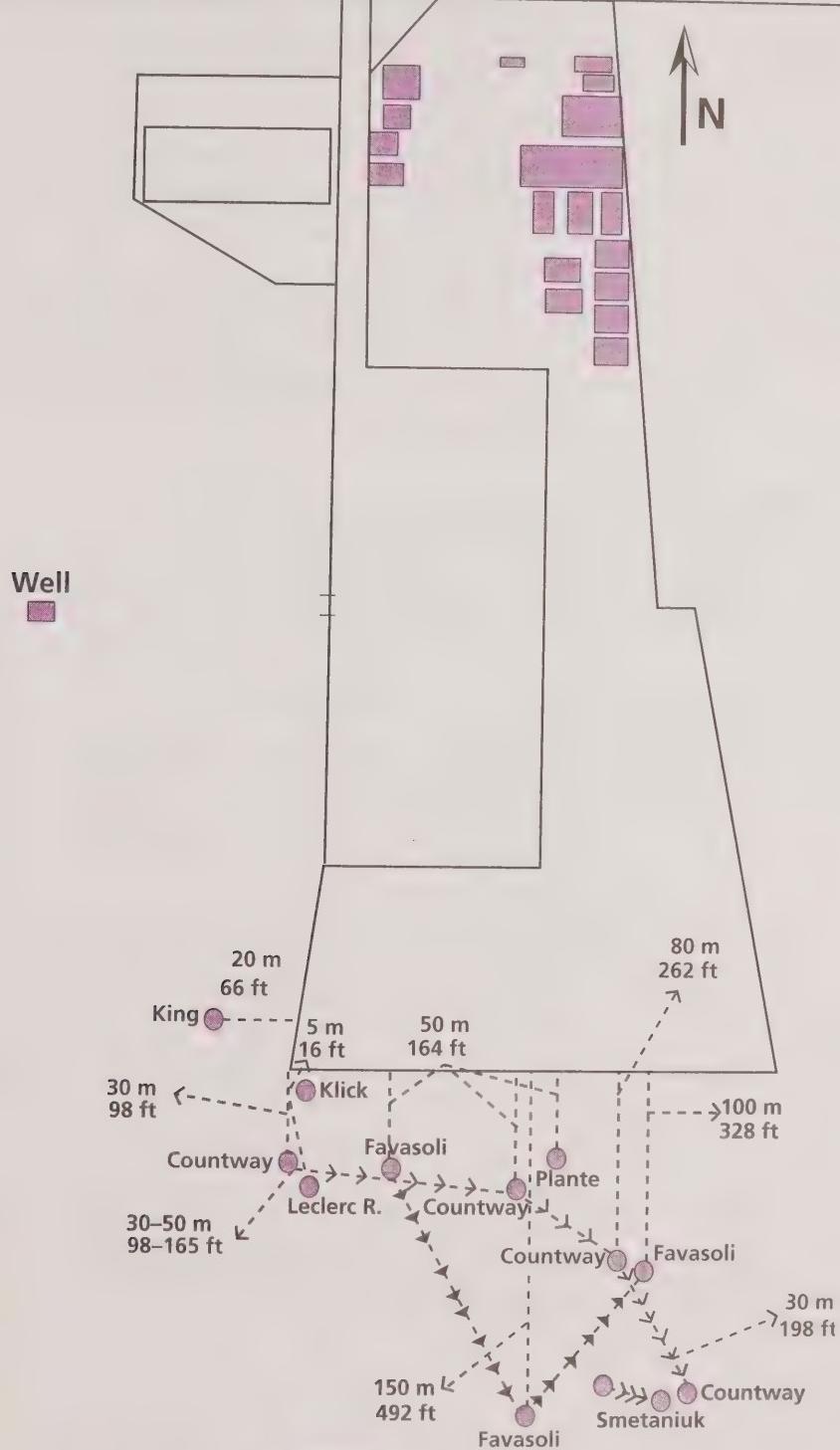
The third pin indicates the spot where he last saw Mr Aruush. He believed that the Somali was headed east straight toward the position of Detachment 64A. He described the placement of the pin as approximately 25 metres west of Detachment 64A's location (Transcripts vol. 131, pp. 26576–26578).

Sgt Plante:

Sgt Plante indicated the location where he saw Mr. Aruush in his flashlight beam. He thought that the distance between the Engineers southern perimeter and the location of Mr. Aruush was about 50 metres, with a distance between himself and Mr. Aruush of about 25 to 30 metres (Transcripts vol. 134, pp. 27239–27241).

LOCATION WHERE WITNESSES SAW MR. ARUUSH RUNNING

Imperial Highway



- Cpl Smetaniuk: Cpl Smetaniuk identified the location of the man running away with two different pins.
- The first pin marks the location where Cpl Smetaniuk saw one of the Somalis running in a southeasterly direction. The distance from the witness position was roughly 50 to 75 metres (Transcripts vol. 137, p. 27775).
- The second pin marks the line of direction in which the Somali man was running (Transcripts vol. 137, pp. 27809–27810).
- Cpl Roch Leclerc: Cpl Leclerc indicated the general location where he saw the second Somali crouched down. He estimated that Mr. Aruush was about 10 to 20 metres from Mr. Abdi and 30 to 50 metres from the south-west corner of the Engineers compound (Transcripts vol. 139, pp. 28319–28320).
- MCpl Countway: MCpl Countway indicated with four different pins the locations of the Somali man running away.
- The first marks the location where MCpl Countway saw a Somali man crouched down for approximately 10 seconds. The Somali was roughly 30 metres from the fence and about 10 to 20 metres from 63 (Transcripts vol. 142, pp. 28773–28774).
- The second pin locates the position of the Somali man when soldiers from Detachment 64A yelled “halt”. The Somali was approximately 50 metres from the perimeter and about 100 metres from Detachment 64A’s location (Transcripts vol. 142, pp. 28782–28783).
- The third pin indicates the line of direction in which the Somali man was running. The Somali was running in a zigzag fashion, slightly south but generally in an easterly direction. MCpl Countway claimed that the Somali was approximately 80 metres from the fence (Transcripts vol. 142, pp. 28775–28776).
- The fourth pin marks the location of Mr. Aruush when MCpl Countway sent Cpl Smetaniuk in pursuit of him. The witness claimed that the distance was approximately 50 metres from the location of Detachment 64A (Transcripts vol. 142, pp. 28793–28796).

ANNEX J

Witnesses who identified the location of Mr. Aruush

- Sgt Groves: According to Sgt Groves' testimony, Mr. Aruush's body was approximately 20 to 25 metres from the southern perimeter and 15 to 20 metres from the south-east corner of the compound (Transcripts vol. 112, pp. 22391–22392).
- WO Marsh: On WO Marsh's map of the Engineers compound, there is no indication of the location of Mr. Aruush's body, but rather a stain in the sand. According to the witness's testimony, the stain was approximately 25 to 35 metres from the south-east corner of the compound (Transcripts vol. 113, pp. 22718–22719).
- Cpl Dostie: Cpl Dostie did not indicate Mr. Aruush's location on the map of the Engineers compound. The pin he placed during his testimony showed the location where the ambulance drew up and soldiers were gathered (Transcripts vol. 116, pp. 23303, 23350).
- Cpl Lalancette: Cpl Lalancette saw one Somali man on the ground and two Canadian soldiers next to him. According to his testimony, this was about 10 to 15 metres from the south-east corner of the Engineers compound (Transcripts vol. 122, pp. 24532, 24539, 24550–24551).
- Cpl Favasoli: Cpl Favasoli claimed to have seen Mr. Aruush's body. He estimated that the body was on its side and approximately 50 to 100 metres from the fence (Transcripts vol. 131, pp. 26594–26595).
- Cpl Smetaniuk: Cpl Smetaniuk indicated the location where Mr. Aruush was shot. The distance from the detachment was roughly 50 to 75 metres (Transcripts vol. 137, p. 27811).
- Cpl Roch Leclerc: Cpl Leclerc indicated the spot where Mr. Aruush fell and did not get up again. The distance from this spot to Detachment 64A was about 50 metres (Transcripts vol. 139, pp. 28324, 28340–28342).

LOCATION OF MR. ARUUSH



- MCpl Countway: MCpl Countway indicated the location where Mr. Aruush was shot. The distance between the Somali man and Detachment 64A was 75 metres. In addition, the body was 150 metres from the south-east corner of the compound (Transcripts vol. 142, pp. 28805–28806, 28853).
- Capt Rainville: Capt Rainville testified that the location of Mr. Aruush's body was about 75 metres to the south-east of Detachment 64A (Transcripts vol. 145, p. 29537).
- LCol Mathieu: LCol Mathieu indicated the location where the second man was shot (Transcripts vol. 171, p. 35131).
- Cpl Mountain: There is no mention of Mr. Aruush's body on Cpl Mountain's map of the Engineers compound. However, he claimed that the ambulance was approximately 10 metres from the south-east corner of the compound (Transcripts vol. 120, p. 24215).

Witnesses who did not identify the location of Mr. Aruush

- Cpl Klick: Cpl Klick claimed that Mr. Aruush was shot three metres from the location where he claimed to have seen the second Somali individual running. He estimated that the Somali was approximately 50 to 100 metres south of the fence (Transcripts vol. 125, pp. 25193–25194, 25207, 25215–25216, 25219–25220).
- Cpl Klick insisted that he saw the ambulance moving into the location with its back opened up, with a number of people moving in and around the vehicle. He also estimated that the ambulance was approximately 75 metres (± 25 metres) from the fence (Transcripts vol. 125, p. 25219).

ANNEX K

Witnesses who identified the location where Cpl Smetaniuk was running

- Cpl Smetaniuk: Cpl Smetaniuk indicated the direction he took when he started running after Mr. Aruush. When Cpl Smetaniuk dropped to the ground, he was approximately 25 metres from Mr. Aruush and 50 metres from Detachment 64A (Transcripts vol. 137, pp. 27812 and 27856).
- Cpl Roch Leclerc: Cpl Leclerc used two pins to indicate the location. The first marked the spot where Cpl Leclerc was when he fired a warning shot. He testified that Mr. Aruush was about 50 metres from him at this point. Cpl Leclerc estimated that Cpl Smetaniuk was 10 to 20 metres from him (Transcripts vol. 139, pp. 28335-28336, 28339-28340). The second pin marked where Cpl Smetaniuk was when Cpl Leclerc told him, "Terry, I'm shooting." Cpl Leclerc thought that Cpl Smetaniuk was about 20 to 30 metres from Mr. Aruush at that point (Transcripts vol. 139, pp. 28330-28332, 28339).
- MCpl Countway: MCpl Countway marked two different locations for Cpl Smetaniuk's chase.
- He indicated where Mr. Aruush was when he sent Cpl Smetaniuk in pursuit of him. MCpl Countway claimed that the distance was approximately 50 metres from Detachment 64A's location. He stated that the distance between the two pins was approximately 30 metres (Transcripts vol. 142, pp. 28793-28796).
- MCpl Countway indicated the direction in which Cpl Smetaniuk ran (Transcripts vol. 142, pp. 28825-28827).

LOCATION WHERE CPL SMETANIUK WAS RUNNING

Imperial Highway



Leclerc R. Countway
Countway Leclerc R.
Smetaniuk

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MEDICAL ANNEXES A AND B

MEDICAL ANNEX A



Major Armstrong's examination of the body of Mr. Aruush depicting the omentum protruding from the abdomen. March 4, 1993. (SILT DND 293754)



Major Armstrong's examination of the body of Mr. Aruush depicting the exit wound along the jawline. March 4, 1993. (SILT DND 293755)

MEDICAL ANNEX B



Dr. Ferris's autopsy of Mr. Aruush's body depicting the skeletonized condition of the remains. May 2, 1993. (SILT DND 293774)



Dr. Ferris's autopsy of Mr. Aruush's body depicting the skeletonized condition of the remains. May 2, 1993. (SILT DND 293774)

NOTES

1. Testimony of LCol (ret) Carol Mathieu, Transcripts vol. 168, pp. 34644–34665.
2. Document book 4, tab 6.
3. Document book 4, tab 6, first document.
4. Document book 84, tab 1, DND 424264-424269.
5. Document book 4, tab 6, DND 007124.
6. Document book 4, tab 6.
7. Testimony of Capt (ret) Michel Rainville, Transcripts vol. 146, pp. 29731–29732.
8. Testimony of Maj Jeremy Mansfield, Transcripts vol. 115, pp. 23030–23031.
9. Testimony of Maj Charles Pommet, Transcripts vol. 107, p. 21422.
10. Document book 48A, tab 6, DND 014624-014628.
11. Document book 82, p. 101, serial 119; testimony of Maj Mansfield, Transcripts vol. 114, p. 22953; and Cpl Roger Chabot, Transcripts vol. 120, p. 24185.
12. Testimony Maj Mansfield, Transcripts vol. 114, pp. 22774–22775; and Cpl Derick Noonan, Transcripts vol. 121, pp. 24342–24343.
13. Testimony of MWO Rui Amaral, Transcripts vol. 104, pp. 20692–20695.
14. Document book 91, tab 4, DND 029963; and Board of Inquiry, Canadian Airborne Regiment Battle Group (hereafter, Board of Inquiry (CARBG)), Phase I, vol. X, Exhibit 97.
15. Testimony of Maj Mansfield, Transcripts vol. 114, pp. 22782, 22790, 22802–22803.
16. Testimony of Maj Jeffrey Kyle, Transcripts vol. 117, p. 23437.
17. Testimony of Maj Kyle, Transcripts vol. 117, pp. 23438, 23443.
18. Testimony of Maj Kyle, Transcripts vol. 117, pp. 23449, 23553, 23666; and Capt (ret) Rainville, Transcripts vol. 144, p. 29222.
19. Testimony of Maj Mansfield, Transcripts vol. 114, pp. 22766, 22770.
20. Testimony of Maj Kyle, Transcripts vol. 117, p. 23445.
21. Testimony of WO Shawn Groves, Transcripts vol. 112, pp. 22338–22341.
22. Testimony of WO (ret) Gary Marsh, Transcript vol. 113, pp. 22578–22579.
23. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29233–29234.
24. Testimony of Maj Mansfield, Transcripts vol. 114, pp. 22795–22796.
25. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29296–29304.
26. Testimony of Maj Kyle, Transcripts vol. 117, pp. 23451–23452.
27. Testimony of LCol Mathieu, Transcripts vol. 170, pp. 35054–35101.
28. Testimony of LCol Mathieu, Transcripts vol. 173, p. 35610.
29. Testimony of LCol Mathieu, Transcripts vol. 173, p. 35611.
30. Testimony of MCpl Ben Klick, Transcripts vol. 128, p. 25944; and Capt (ret) Rainville, Transcripts vol. 144, pp. 29233–29234.
31. Testimony of MCpl Klick, Transcripts vol. 128, p. 25946.
32. Testimony of Sgt René Plante, Transcripts vol. 136, p. 27571; and Cpl Terry Smetaniuk, Transcripts vol. 137, p. 27764.
33. Testimony of MCpl Klick, Transcripts vol. 124, p. 24985, and vol. 128, p. 25914; MCpl Marco Favaroli, Transcripts vol. 132, pp. 26649–26653; MCpl Brent Countway, Transcripts vol. 141, p. 28693; Sgt Plante, Transcripts vol. 133, p. 27040, and vol. 136, pp. 27667–27669; and Cpl Smetaniuk, Transcripts vol. 137, p. 27727.
34. Testimony of MCpl Klick, Transcripts vol. 124, p. 25093.
35. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29350–29352.
36. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26474.

37. Testimony of MCpl Klick, Transcripts vol. 124, p. 24955; and MCpl Chris King, Transcripts vol. 127, p. 25615.
38. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26459.
39. Testimony of Sgt Plante, Transcripts vol. 136, pp. 27667–27669.
40. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26481.
41. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26461.
42. Testimony of Sgt Plante, Transcripts vol. 135, p. 27416, and vol. 136, pp. 27553–27555.
43. Testimony of MCpl King, Transcripts vol. 129, p. 26162.
44. Testimony of MCpl King, Transcripts vol. 129, pp. 26147, 26150.
45. Testimony of Sgt Plante, Transcripts vol. 135, p. 27428.
46. Testimony of MCpl King, Transcripts vol. 129, p. 26092.
47. Testimony of MCpl King, Transcripts vol. 129, p. 26093.
48. Testimony of MCpl King, Transcripts vol. 130, pp. 26258, 26268.
49. Testimony of MCpl King, Transcripts vol. 130, p. 26261.
50. Testimony of Capt (ret) Rainville, Transcripts vol. 144, p. 29246.
51. Testimony of MCpl King, Transcripts vol. 130, p. 26264.
52. Testimony of Capt (ret) Rainville, Transcripts vol. 144, p. 29350; and Sgt Plante, Transcripts vol. 135, p. 27365.
53. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29238–29240.
54. Testimony of WO Groves, Transcripts vol. 112, pp. 22372–22377, 22457–22458, and vol. 113, pp. 22524–22529.
55. Testimony of MCpl Marco Favaroli, Transcripts vol. 131, p. 26461.
56. Testimony of MCpl Klick, Transcripts vol. 124, p. 25050; and Capt (ret) Rainville, transcript volume 144, pp. 29305–29310.
57. Testimony of MCpl Marco Favaroli, Transcripts vol. 131, p. 26461.
58. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, p. 28213, and vol. 140, pp. 28435–28436.
59. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26534.
60. Testimony of MCpl King, Transcripts vol. 127, p. 25806.
61. Testimony of MCpl Klick, Transcripts vol. 126, p. 25519.
62. Testimony of MCpl Klick, Transcripts vol. 124, p. 24976.
63. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29310–29311.
64. Testimony of MCpl Klick, Transcripts vol. 128, pp. 25905–25911.
65. Testimony of MCpl Klick, Transcripts vol. 128, pp. 25913, 25915.
66. Testimony of MCpl Klick, Transcripts vol. 128, p. 25916.
67. Testimony of MCpl Favaroli, Transcripts vol. 132, p. 26760.
68. Testimony of Maj Vincent Buonomici, Transcripts vol. 176, pp. 36172–36174.
69. Testimony of MCpl Klick, Transcripts vol. 125, p. 25353.
70. Testimony of MCpl Klick, Transcripts vol. 126, pp. 25518–25519.
71. Testimony of MCpl Klick, Transcripts vol. 128, p. 25918; and WO Groves, Transcripts vol. 112, pp. 22350–22360.
72. Testimony of MCpl Klick, Transcripts vol. 128, p. 25919; and WO Groves, Transcripts vol. 112, pp. 22330, 22334, 22470, and vol. 113, pp. 22536–22548, 22559–22560.
73. Testimony of Maj Mansfield, Transcripts vol. 114, p. 22855.
74. Testimony of Maj Mansfield, Transcripts vol. 114, pp. 22844–22846.
75. Testimony of Maj Mansfield, Transcripts vol. 115, p. 22844.
76. Testimony of WO Groves, Transcripts vol. 112, pp. 22330, 22334, 22470; Transcripts vol. 113, pp. 22536–22548, 22559–22560.

77. Testimony of MWO Donald O'Connor, Transcripts vol. 109, p. 21881; Cpl Stéphane Dostie, Transcripts vol. 116, pp. 23231–23232; and Maj Kyle, Transcripts vol. 117, pp. 23445–23446.
78. Testimony of Maj Kyle, Transcripts vol. 118, p. 23794; and Capt Paul Hope, Transcripts vol. 147, pp. 30053–30055.
79. Testimony of Cpl Dostie, Transcripts vol. 116, pp. 23234–23235.
80. Testimony of WO Groves, Transcripts vol. 112, pp. 22347–22348, 22425–22426, 22459–22460.
81. Testimony of WO Tom Ashman, Transcripts vol. 123, p. 24757.
82. Testimony of WO Groves, Transcripts vol. 112, pp. 22350–22360, 22363–22366, and vol. 113, pp. 22518–22521.
83. Testimony of Maj Mansfield, Transcripts vol. 114, pp. 22844–22846.
84. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29222–29224.
85. Testimony of Maj Mansfield, Transcripts vol. 114, p. 22929.
86. Testimony of Maj Kyle, Transcripts vol. 118, pp. 23798–23800.
87. Testimony of Maj Mansfield, Transcripts vol. 114, p. 22792.
88. Testimony of WO (ret) Gary Marsh, Transcripts vol. 113, p. 22600.
89. Testimony of WO (ret) Marsh, Transcripts vol. 113, p. 22602; Maj Mansfield, Transcripts vol. 114, p. 22792; MCpl Klick, Transcripts vol. 125, p. 25180; and Capt (ret) Rainville, Transcripts vol. 144, pp. 29251–29261.
90. Testimony of MCpl Klick, Transcripts vol. 125, p. 25180.
91. Testimony of Maj Mansfield, Transcripts vol. 115, p. 23036.
92. Testimony of Maj Mansfield, Transcripts vol. 115, p. 23037.
93. However, Cpl Stéphane Dostie, who was in the Service Commando tower the night of March 4th and was not involved in the shootings, stated that lights coming from the barracks did not affect the clarity of images seen through night-vision goggles (Transcripts vol. 116, pp. 23289, 23298–23299).
94. Testimony of Maj Mansfield, Transcripts vol. 114, p. 22932.
95. Testimony of WO (ret) Marsh, Transcripts vol. 113, p. 22603.
96. Testimony of Maj Mansfield, Transcripts vol. 115, pp. 23012–23013.
97. Testimony of Maj Mansfield, Transcripts vol. 114, p. 22958.
98. Document book 48B, tab 18, DND 289241.
99. Testimony of Cpl Noonan, Transcripts vol. 121, pp. 24349–24350; and Cpl Chabot, Transcripts vol. 120, p. 24170.
100. Testimony of MCpl Klick, Transcripts vol. 124, p. 24985, and vol. 128, p. 25914.
101. Testimony of MCpl Klick, Transcripts vol. 124, p. 25093.
102. Testimony of MCpl King, Transcripts vol. 129, p. 26093.
103. Testimony of MCpl Klick, Transcripts vol. 124, p. 24942; and WO Groves, Transcripts vol. 112, pp. 22331–22332, 22475–22476.
104. CFAO 22-3, article 7a, falls under Specifically Assigned Investigations and reads: "7. SIU assistance shall be requested by a commander to investigate known, suspected or attempted: a. acts of subversion, espionage, sabotage or terrorism". This article allows for no discretion on the part of the commander when sabotage is suspected.
105. Written Submission of Mr. Shields on behalf of Major Vincent J. Buonamici, tab 1, p. 7, paragraphs 20–21.
106. Testimony of MCpl Klick, Transcripts vol. 124, p. 24986.
107. Testimony of Maj Mansfield, Transcripts vol. 115, p. 23019.
108. Testimony of MCpl Klick, Transcripts vol. 124, p. 24980, and vol. 128, p. 25934.

109. Testimony of MCpl Klick, Transcripts vol. 126, p. 25510.
110. Testimony of MCpl Klick, Transcripts vol. 126, p. 25510; and Capt (ret) Rainville, Transcripts vol. 144, p. 29276.
111. Testimony of MCpl Klick, Transcripts vol. 124, p. 25008; Capt (ret) Rainville, Transcripts vol. 144, pp. 29282–29291.
112. Testimony of MCpl Klick, Transcripts vol. 124, p. 25093.
113. Testimony of MCpl Klick, Transcripts vol. 128, p. 25920.
114. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29411–29414.
115. Testimony of MCpl Klick, Transcripts vol. 128, p. 25897.
116. Testimony of MCpl Klick, Transcripts vol. 128, p. 25898.
117. Testimony of Sgt Plante, Transcripts vol. 135, p. 27433.
118. Testimony of MCpl Klick, Transcripts vol. 128, p. 25899; and MCpl Favaroli, Transcripts vol. 133, p. 26906.
119. Testimony of MCpl Klick, Transcripts vol. 128, p. 25902.
120. Testimony of MCpl King, Transcripts vol. 130, pp. 26349, 26381.
121. Testimony of MCpl King, Transcripts vol. 130, pp. 26387, 26388.
122. Testimony of MCpl Favaroli, Transcripts vol. 132, p. 26760.
123. Testimony of Sgt Plante, Transcripts vol. 135, pp. 27341, 27343.
124. Testimony of Sgt Plante, Transcripts vol. 135, p. 27345.
125. Testimony of Sgt Plante, Transcripts vol. 135, p. 27348.
126. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, p. 28235–28236, and vol. 140, p. 28424–28426.
127. Testimony of MCpl King, Transcripts vol. 127, p. 25766.
128. Testimony of MCpl King, Transcripts vol. 130, p. 26291.
129. Testimony of MCpl King, Transcripts vol. 130, p. 26291.
130. Testimony of MCpl King, Transcripts vol. 130, p. 26294.
131. Testimony of MCpl King, Transcripts vol. 130, p. 26299.
132. Testimony of MCpl King, Transcripts vol. 130, p. 26301.
133. Testimony of MCpl King, Transcripts vol. 130, p. 26302.
134. Testimony of Sgt Plante, Transcripts vol. 135, pp. 27425–27426, 27429.
135. Testimony of MCpl King, Transcripts vol. 130, p. 26311.
136. Testimony of Capt Hope, Transcripts vol. 148, pp. 30241–30244, 30249–30250.
137. Testimony of MCpl Klick, Transcripts vol. 128, pp. 25935–25936.
138. Document book 48B, tab 18, DND 289251–289266.
139. Document book 48B, tab 18, DND 289260–289261.
140. Testimony of MCpl King, Transcripts vol. 129, pp. 26099, 26100.
141. Document book 48B, tab 16, DND 289217.
142. Document book 48B, tab 18, DND 289233–289241.
143. Testimony of Capt Hope, Transcripts vol. 148, pp. 30241–30244, 30249–30250.
144. Testimony of Maj Kyle, Transcripts vol. 117, pp. 23544–23545.
145. Testimony of Maj Kyle, Transcripts vol. 117, p. 23549, and vol. 118, p. 23752.
146. Document book 48B, tab 15, DND 289205.
147. Testimony of Maj Kyle, Transcripts vol. 118, p. 23755.
148. Testimony of MCpl Klick, Transcripts vol. 128, p. 25888.
149. Testimony of MCpl Klick, Transcripts vol. 126, p. 25444.
150. Testimony of MCpl King, Transcripts vol. 127, pp. 25777, 25778, 25792.
151. Testimony of MCpl King, Transcripts vol. 130, pp. 26304–26308. MCpl King was instructed to rewrite his statement to reflect only what he saw and heard, not what he learned subsequently from his colleagues.

152. Testimony of MCpl Klick, Transcripts vol. 128, p. 25924.
153. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29276–28283.
154. Testimony of Sgt Plante, Transcripts vol. 135, p. 27349.
155. Testimony of WO (ret) Marsh, Transcripts vol. 113, p. 22594.
156. Testimony of MCpl Klick, Transcripts vol. 128, p. 25948.
157. Testimony of MCpl Klick, Transcripts vol. 128, p. 25949.
158. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29282–29291.
159. Testimony of MCpl Klick, Transcripts vol. 129, pp. 26064, 26065.
160. Document book 48A, tab 7, DND 289103.
161. Testimony of Maj Mansfield, Transcripts vol. 114, p. 22795.
162. Testimony of Maj Mansfield, Transcripts vol. 114, pp. 22933–22935.
163. Testimony of Maj Mansfield, Transcripts vol. 114, p. 22937.
164. Testimony of WO (ret) Marsh, Transcripts vol. 113, p. 22593.
165. Testimony of WO (ret) Marsh, Transcripts vol. 113, p. 22596.
166. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29296–29304.
167. Testimony of Maj Kyle, Transcripts vol. 117, p. 23455.
168. Testimony of LCol Mathieu, Transcripts vol. 171, p. 35154.
169. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29326–29327.
170. Testimony of Capt (ret) Rainville, Transcripts vol. 144, p. 29330.
171. Testimony of LCol Mathieu, Transcripts vol. 171, p. 35154; and Col Serge Labbé, Transcripts vol. 164, p. 33481.
172. Whether they behaved as thieves would have behaved is also in question because, according to MCpl Countway, MCpl Roch Leclerc, and subsequently Sgt Plante, when the Somalis were first spotted they were not apprehended immediately because they had done nothing wrong and had not behaved suspiciously. Testimony of MCpl Countway, Transcripts vol. 141, pp. 28721–28722; MCpl Roch Leclerc, Transcripts vol. 139, p. 28269; and Sgt Plante, Transcripts vol. 136, pp. 27484–27485.
173. Testimony of Cpl Claude Lalancette, Transcripts vol. 122, pp. 24516–24520.
174. Testimony of Cpl Lalancette, Transcripts vol. 122, pp. 24524–24529.
175. Testimony of Cpl Lalancette, Transcripts vol. 122, pp. 24529–24530.
176. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, pp. 28264, 28273–28275.
177. Testimony of MCpl Countway, Transcripts vol. 141, pp. 28742–28745.
178. Document book 48B, tab 18, DND 289259, 289263.
179. Testimony of MCpl Roch Leclerc, Transcripts vol. 141, p. 28619.
180. Testimony of Cpl Smetaniuk, Transcripts vol. 137, pp. 27759–27762.
181. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29388–29393.
182. Document book 48B, tab 18, DND 289243.
183. Testimony of MCpl Countway, Transcripts vol. 141, p. 28742.
184. Testimony of MCpl Countway, Transcripts vol. 141, pp. 28716–28720.
185. Testimony of MCpl Countway, Transcripts vol. 142, pp. 28956–28957, and vol. 143, pp. 29075–29080.
186. Testimony of MCpl Klick, Transcripts vol. 124, p. 25080.
187. Document book 48B, tab 18, DND 289265.
188. Testimony of MCpl Klick, Transcripts vol. 126, pp. 25523–25224.
189. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29406–29410.
190. Document book 48B, tab 18, DND 289244.
191. Testimony of MCpl Klick, Transcripts vol. 128, p. 25901.
192. Testimony of Sgt Plante, Transcripts vol. 135, pp. 27433, 27447.

193. Testimony of MCpl Favaoli, Transcripts vol. 131, pp. 26603–26605.
194. These supplementary questions were drawn up following Capt Philippe's review of the summary investigation report for Col Labb  . They were answered by the Recce Platoon members involved in the incident in order to provide more information for Col Labb   to complete his own report.
195. Testimony of Cpl Lalancette, Transcripts vol. 122, pp. 24529–24530.
196. Document book 74B, DND 305602, serial 34.
197. Testimony of Cpl Smetaniuk, Transcripts vol. 137, p. 27759.
198. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, pp. 28266–28267.
199. Testimony of MCpl Countway, Transcripts vol. 141, p. 28715, vol. 142, p. 28761, and vol. 143, pp. 29102–29105.
200. Testimony of MCpl Favaoli, Transcripts vol. 131, p. 26612; and Sgt Plante, Transcripts vol. 134, pp. 27139–27141, and vol. 136, pp. 27652–27654.
201. Testimony of MCpl King, Transcripts vol. 129, pp. 26189–26195.
202. Testimony of MCpl King, Transcripts vol. 129, pp. 26207–26209, 26220.
203. Testimony of Col Labb  , Transcripts vol. 164, pp. 33400–33401.
204. Testimony of MCpl King, Transcripts vol. 130, p. 26330.
205. Testimony of MCpl King, Transcripts vol. 130, pp. 26250–26251.
206. Testimony of MCpl King, Transcripts vol. 130, p. 26309.
207. Testimony of MCpl King, Transcripts vol. 130, p. 26310.
208. Testimony of MCpl Klick, Transcripts vol. 125, p. 25149.
209. Testimony of Capt (ret) Rainville, Transcripts vol. 146, pp. 29745–29749.
210. Testimony of MCpl Favaoli, Transcripts vol. 131, p. 26560.
211. Testimony of MCpl Favaoli, Transcripts vol. 131, pp. 26568–26569, and vol. 132, p. 26715.
212. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27139–27141.
213. Testimony of Sgt Plante, Transcripts vol. 135, pp. 27404, 27418–27419.
214. Testimony of MCpl Favaoli, Transcripts vol. 132, p. 26737.
215. Testimony of MCpl Favaoli, Transcripts vol. 131, pp. 26580, 26612, and vol. 132, p. 26715.
216. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29489–29492; and MCpl Countway, Transcripts vol. 142, pp. 28783–28787.
217. Testimony of MCpl Favaoli, Transcripts vol. 131, p. 26584.
218. Testimony of Cpl Smetaniuk, Transcripts vol. 138, pp. 28092–28093.
219. Exhibit P-257; testimony of MCpl Favaoli, Transcripts vol. 131, p. 26530.
220. Testimony of MCpl Favaoli, Transcripts vol. 131, pp. 26531–26532.
221. Testimony of MCpl Favaoli, Transcripts vol. 131, pp. 26541–26542.
222. Testimony of MCpl Favaoli, Transcripts vol. 131, p. 26542.
223. Testimony of MCpl Favaoli, Transcripts vol. 131, pp. 26542–26543, and vol. 132, p. 26673.
224. Testimony of MCpl Favaoli, Transcripts vol. 131, pp. 26542–26544.
225. Testimony of MCpl Klick, Transcripts vol. 124, p. 25063.
226. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25065–25066.
227. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25066, 25070.
228. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25066, 25070–25071.
229. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25071–25073.
230. Testimony of MCpl Favaoli, Transcripts vol. 131, p. 26626, and vol. 132, pp. 26673–26674.
231. Testimony of MCpl Favaoli, Transcripts vol. 131, pp. 26545–26546.

232. Testimony of MCpl Favasoli, Transcripts vol. 131, p. 26544; and MCpl Klick, Transcripts vol. 124, p. 25080.
233. Testimony of MCpl Favasoli, Transcripts vol. 131, p. 26546.
234. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25072–25073, 25077.
235. Testimony of MCpl Favasoli, Transcripts vol. 131, pp. 26546–26547.
236. Testimony of MCpl Favasoli, Transcripts vol. 131, p. 26547.
237. Testimony of MCpl Favasoli, Transcripts vol. 131, p. 26549.
238. Testimony of MCpl Favasoli, Transcripts vol. 131, p. 26550.
239. Testimony of MCpl Favasoli, Transcripts vol. 131, pp. 26551–26554.
240. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27079–27082.
241. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27088–27092, 27112–27114.
242. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27117–27119.
243. Testimony of Sgt Plante, Transcripts vol. 134, p. 27124.
244. Testimony of Sgt Plante, Transcripts vol. 134, p. 27124.
245. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29396–29398, 29406–29411.
246. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25081–25082.
247. Testimony of MCpl Klick, Transcripts vol. 124, p. 25087.
248. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25085–25086.
249. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27126–27135.
250. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27132–27135.
251. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27136–27137.
252. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27141–27142.
253. Testimony of Sgt Plante, Transcripts vol. 136, pp. 27519–27521.
254. Testimony of Sgt Plante, Transcripts vol. 135, pp. 27432–27434.
255. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27144–27146.
256. Testimony of Sgt Plante, Transcripts vol. 134, p. 27145.
257. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27165–27166.
258. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27153–27158.
259. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27168, 27172–27175.
260. Testimony of MCpl Favasoli, Transcripts vol. 132, pp. 26709–26711.
261. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27183–27184.
262. Testimony of Sgt Plante, Transcripts vol. 135, p. 27449.
263. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27187–27195.
264. Testimony of MCpl King, Transcripts vol. 127, pp. 25627–25628, 25671–25672, 25686–25689.
265. Testimony of MCpl King, Transcripts vol. 127, pp. 25799–25800.
266. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29411–29414.
267. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29240–29246.
268. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29418, 29447.
269. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29427–29432, 29447–29449.
270. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25089–25090.
271. Testimony of MCpl Klick, Transcripts vol. 128, pp. 25896–25897.
272. Testimony of MCpl Klick, Transcripts vol. 124, p. 25098.
273. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25090–25092.
274. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25106–25107.
275. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29451–29453, 29478–29479, 29485–29486.
276. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25104–25105.

277. Testimony of MCpl Klick, Transcripts vol. 124, p. 25091, and vol. 128, p. 25901.
278. Testimony of Cpl Lalancette, Transcripts vol. 122, pp. 24529–24531.
279. Testimony of Cpl Lalancette, Transcripts vol. 122, pp. 24534–24539.
280. Testimony of Cpl Noonan, Transcripts vol. 121, pp. 24289–24292; and Document book 78, tab 1.
281. Testimony of MCpl Favaroli, Transcripts vol. 132, p. 26674.
282. Testimony of WO Groves, Transcripts vol. 112, pp. 22395, 22453.
283. Testimony of Cpl Michael Mountain, Transcripts vol. 120, pp. 24208, 24219.
284. Testimony of WO Tom Ashman, Transcripts vol. 122, pp. 24675–24676, 24689, and vol. 123, p. 24774.
285. Testimony of Maj Barry Armstrong, Transcripts vol. 178, pp. 36729–36730, 36749.
286. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26588, and vol. 132, pp. 26713–26714; and Cpl Mountain, Transcripts vol. 120, pp. 24216, 24218; and Document book 48B, tab 27.
287. Testimony of WO (ret) Marsh, Transcripts vol. 113, p. 22629.
288. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26606–26607.
289. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26601–26602.
290. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26603–26604.
291. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26604–26605.
292. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26620–26622.
293. Testimony of MCpl Favaroli, Transcripts vol. 132, pp. 26682–26683.
294. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26607, 26623, and vol. 132, p. 26691.
295. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29591–29592.
296. Testimony of WO Groves, Transcripts vol. 112, pp. 22350–22360; Cpl Dostie, Transcripts vol. 116, pp. 23246–23249; and Cpl Chabot, Transcripts vol. 120, p. 24127.
297. Testimony of Capt (ret) Rainville, Transcripts vol. 145, p. 29386.
298. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29365–29370.
299. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27098–27099; MCpl Favaroli, Transcripts vol. 131, pp. 26511–26513; and Maj Kyle, Transcripts vol. 118, pp. 23682, 23992.
300. Testimony of Maj Mansfield, Transcripts vol. 114, pp. 22874–22875.
301. Testimony of WO Groves, Transcripts vol. 112, pp. 22375–22376.
302. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27119, 27202.
303. Testimony of MCpl King, Transcripts vol. 127, pp. 25662–25664.
304. Testimony of MCpl King, Transcripts vol. 127, p. 25626.
305. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26516.
306. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26513, and vol. 133, p. 26895.
307. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26601–26603.
308. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29411–29414.
309. Testimony of MCpl Favaroli, Transcripts vol. 132, pp. 26825–26827.
310. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27231–27233.
311. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29451–29455.
312. Document book 48B, tab 18, DND 289265.
313. Testimony of MCpl Klick, Transcripts vol. 124, pp. 25090–25092.
314. Testimony of Sgt Plante, Transcripts vol. 135, p. 27374.
315. Testimony of Sgt Plante, Transcripts vol. 136, p. 27526.

316. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26551–26552.
317. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27208–27210, 27222.
318. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26558.
319. Testimony of Sgt Plante, Transcripts vol. 134, p. 27191.
320. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27271–27273, 27296.
321. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26553; and MCpl King, Transcripts vol. 127, p. 25760.
322. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26552, 26558, and vol. 132, p. 26829.
323. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27185–27186.
324. Testimony of Sgt Plante, Transcripts vol. 136, p. 27496.
325. Testimony of Sgt Plante, Transcripts vol. 133, pp. 27071–27072.
326. Testimony of Capt (ret) Rainville, Transcripts vol. 145, p. 29488.
327. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26587–26588; MCpl King, Transcripts vol. 127, p. 25727; and Sgt Plante, Transcripts vol. 134, p. 27274.
328. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26644.
329. Testimony of Sgt Plante, Transcripts vol. 135, p. 27403.
330. Testimony of MCpl Favaroli, Transcripts vol. 131, p. 26629.
331. Testimony of LCol Mathieu, Transcripts vol. 172, p. 35494.
332. Testimony of MCpl Klick, Transcripts vol. 125, pp. 25140–25142, 25190.
333. Testimony of MCpl Favaroli, Transcripts vol. 131, pp. 26577–26578.
334. Testimony of MCpl Countway, Transcripts vol. 142, pp. 28775–28776.
335. Testimony of LCol Carol Mathieu, Transcripts vol. 172, p. 35496.
336. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29350–29352, and vol. 145, p. 29493.
337. Testimony of Sgt Plante, Transcripts vol. 136, p. 27496; Cpl Smetaniuk, Transcripts vol. 138, pp. 28106–28110; and MCpl Roch Leclerc, Transcripts vol. 140, pp. 28467–28468.
338. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, pp. 28308–28312, 28316–28317, and vol. 140, pp. 28450–28451, 28455.
339. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, pp. 28276–28277, and vol. 140, p. 28446.
340. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29418–29426.
341. Testimony of MCpl Countway, Transcripts vol. 142, p. 28993.
342. Testimony of MCpl Countway, Transcripts vol. 142, pp. 28993–28994.
343. Document book 48, tab 4, pp. H-1 to K-2.
344. Testimony of MCpl Klick, Transcripts vol. 125, p. 25149.
345. Testimony of Cpl Smetaniuk, Transcripts vol. 138, pp. 28067–28068.
346. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, pp. 28322–28323, 28259; and MCpl Countway, Transcripts vol. 142, p. 28784.
347. Testimony of MCpl Roch Leclerc, Transcripts vol. 141, p. 28664.
348. Testimony of MCpl Roch Leclerc, Transcripts vol. 141, pp. 28565–28566.
349. Testimony of MCpl Klick, Transcripts vol. 125, pp. 25188–25189; and MCpl Countway, Transcripts vol. 142, p. 28779.
350. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, pp. 28323–28325, and vol. 140, pp. 28465–28466; Cpl Smetaniuk, Transcripts vol. 137, p. 27847, and vol. 138, pp. 27940–27949; and MCpl Countway, Transcripts vol. 142, pp. 28793–28796.
351. Testimony of Cpl Smetaniuk, Transcripts vol. 138, p. 28011.
352. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, p. 28326.
353. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, p. 28332.

354. Testimony of Cpl Smetaniuk, Transcripts vol. 137, pp. 27840–27841.
355. Testimony of Cpl Smetaniuk, Transcripts vol. 137, p. 27866.
356. Testimony of MCpl Roch Leclerc, Transcripts vol. 140, p. 28395.
357. Testimony of MCpl Countway, Transcripts vol. 143, pp. 29119–29122; and MCpl Roch Leclerc, Transcripts vol. 141, p. 28642.
358. Testimony of Cpl Dostie, Transcripts vol. 116, pp. 23258–23260, 23263, 23266, 23290.
359. Testimony of Cpl Martin Leclerc, Transcripts vol. 121, pp. 24441–24448, 24453, 24456, 24489.
360. Testimony of Cpl Dostie, Transcripts vol. 116, p. 23273.
361. Testimony of Cpl Chabot, Transcripts vol. 120, p. 24109.
362. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, pp. 28349–28350.
363. Document book 48, tab 4, p. DND 288197.
364. Document book 48A, tab 10, pp. D-4 to D-13.
365. Document book 48, tab 4, DND 288197; Document book 48A, tab 10, pp. D-7, D-29.
366. Document book 48, tab 4, DND 288197.
367. Document book 48A, tab 10, pp. D-6 to D-13.
368. Document book 48AF, tab 17, DND 018119.
369. Document book 48, tab 4, p. N-1; Document book 48A, tab 10, p. D-3; and testimony of Maj Armstrong, Transcripts vol. 178, p. 36760.
370. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36734.
371. Document book 48A, tab 10, pp. D-7 to D-8.
372. Testimony of Maj Vincent Buonamici, Transcripts vol. 176, pp. 36214–36215.
373. Testimony of Cpl Lalancette, Transcripts vol. 122, p. 24551.
374. Testimony of WO Groves, Transcripts vol. 112, pp. 22384, 22386–22389, 22494–22497.
375. Testimony of WO Groves, Transcripts vol. 112, pp. 22390, 22409, 22428–22431, 22497–22502.
376. Testimony of Cpl Mountain, Transcripts vol. 120, p. 24215.
377. Testimony of MCpl Favasoli, Transcripts vol. 131, pp. 26594–26595.
378. Testimony of MCpl Klick, Transcripts vol. 125, p. 25219.
379. Testimony of Cpl Smetaniuk, Transcripts vol. 131, p. 27811; MCpl Roch Leclerc, Transcripts vol. 139, p. 28324; MCpl Countway, Transcripts vol. 142, pp. 28805–28806, 28853; and Capt (ret) Rainville, Transcripts vol. 145, p. 29537.
380. Testimony of Cpl Smetaniuk, Transcripts vol. 131, p. 27811; MCpl Roch Leclerc, Transcripts vol. 139, p. 28324; MCpl Countway, Transcripts vol. 142, pp. 28805–28806, 28853; and Capt (ret) Rainville, Transcripts vol. 145, p. 29537.
381. Testimony of WO (ret) Marsh, Transcripts vol. 113, pp. 22627–22629.
382. Testimony of WO (ret) Marsh, Transcripts vol. 113, p. 22629.
383. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29532–29542.
384. Document book 74B, DND 305604, serial 46.
385. Testimony of MCpl Favasoli, Transcripts vol. 131, pp. 26599–26600.
386. Testimony of Capt (ret) Rainville, Transcripts vol. 145, pp. 29554–29563.
387. Testimony of MCpl Roch Leclerc, Transcripts vol. 140, pp. 28482–28483.
388. Testimony of Sgt Plante, Transcripts vol. 135, p. 27406.
389. Testimony of MCpl Countway, Transcripts vol. 142, pp. 28890–28891.
390. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, p. 28215.
391. Testimony of Cpl Smetaniuk, Transcripts vol. 137, pp. 27734–27735.

392. Testimony of MCpl Marco Favaroli, Transcripts vol. 132, p. 26779, and vol. 131, pp. 26490–26491.
393. Testimony of Capt (ret) Rainville, Transcripts vol. 145, p. 29472.
394. Testimony of Sgt Plante, Transcripts vol. 134, pp. 27061–27064.
395. Testimony of Capt (ret) Rainville, Transcripts vol. 144, pp. 29336–29341.
396. Testimony of Col (ret) Allan Wells, Transcripts vol. 149, p. 30386.
397. Testimony of Capt Hope, Transcripts vol. 147, p. 29918.
398. Testimony of Capt Hope, Transcripts vol. 148, pp. 30251–30252.
399. Testimony of Capt Hope, Transcripts vol. 147, pp. 29915–29916.
400. Testimony of Capt Hope, Transcripts vol. 147, p. 29998.
401. Testimony of Capt Hope, Transcripts vol. 147, p. 29926.
402. Testimony of Capt Hope, Transcripts vol. 147, pp. 30112–30113.
403. Document book 48A, tab 6, DND 014643.
404. Testimony of Capt Hope, Transcripts vol. 147, p. 29963.
405. Testimony of Capt Hope, Transcripts vol. 147, pp. 30011–30015.
406. Testimony of Capt Hope, Transcripts vol. 147, p. 30008, and vol. 148, p. 30310.
407. Testimony of Capt Hope, Transcripts vol. 147, p. 30017, and vol. 148, pp. 30195–30198.
408. Testimony of Capt Hope, Transcripts vol. 148, pp. 30199–30201.
409. Testimony of Capt Hope, Transcripts vol. 147, pp. 29918–29919.
410. Testimony of Capt Hope, Transcripts vol. 147, p. 29915.
411. Document book 48AD, tab 5.
412. Testimony of Capt Hope, Transcripts vol. 147, pp. 29920–29925.
413. Testimony of Capt Hope, Transcripts vol. 147, pp. 29930–29933.
414. Document book 48B, tab 18, DND 288162–288163.
415. Document book 48A, tab 6, DND 014644.
416. Testimony of Capt Hope, Transcripts vol. 147, pp. 30102–30103.
417. Document book 48A, tab 6, DND 014615.
418. Capt Hope did not interview the following partial list of relevant witnesses:
Maj Jewer, Maj Brown, Maj Vanderveer, Capt Kyle, Capt Mansfield, WO Ashman, WO Marsh, Sgt Groves, Cpl Lalancette, Cpl Dostie, Cpl Martin Leclerc, Cpl Noonan.
419. Testimony of Capt Hope, Transcripts vol. 148, pp. 30240–30245; and Document book 48A, tab 6, DND 014646.
420. Document book 48A, tab 6, DND 014646.
421. Testimony of Capt Hope, Transcripts vol. 148, pp. 30251–30252.
422. Testimony of Capt Hope, Transcripts vol. 148, pp. 30295–30297.
423. Testimony of Capt Hope, Transcripts vol. 148, pp. 30297–30299.
424. Testimony of Capt Hope, Transcripts vol. 148, pp. 30204–30205.
425. Document book 48Z, DND 294565.
426. Document book 48Z, DND 295000; and testimony of LCol Mathieu, Transcripts vol. 171, pp. 35240–35252.
427. Document book 48B, tab 29, DND 289350.
428. Testimony of Capt Hope, Transcripts vol. 148, pp. 30302–30304.
429. Cover letter from LCol Mathieu, endorsing Capt Hope's findings, Document book 48B, tab 18, DND 289274.
430. Document book 48B, tab 17, DND 289231-289232.
431. Testimony of Capt Hope, Transcripts vol. 148, pp. 30282–30285.
432. Testimony of Capt Hope, Transcripts vol. 147, pp. 30072–30073.

433. Document book 48B, tab 18, DND 289270.
434. Testimony of Capt Hope, Transcripts vol. 147, pp. 30022–30026.
435. Document book 48B, tab 17, DND 289231-289232; and testimony of Capt Hope, Transcripts vol. 148, p. 30288.
436. Testimony of Capt Hope, Transcripts vol. 147, p. 30062.
437. Testimony of Capt Hope, Transcripts vol. 148, p. 30288.
438. Document book 48B, tab 17, DND 289230-289233.
439. Testimony of Capt Hope, Transcripts vol. 147, p. 30143.
440. Testimony of Capt Hope, Transcripts vol. 147, pp. 30066–30070.
441. Document book 48B, tab 18, DND 289237-289238.
442. Document book 48B, tab 18, DND 289240.
443. Testimony of Capt Hope, Transcripts vol. 147, pp. 30063–30065.
444. Document book 48B, tab 18, DND 289263.
445. Testimony of Capt Hope, Transcripts vol. 147, p. 30142.
446. Testimony of Capt Hope, Transcripts vol. 147, pp. 29972–29973.
447. Testimony of Capt Hope, Transcripts vol. 148, pp. 30202–30203.
448. Document book 48B, tab 17, DND 289231 (emphasis added).
449. Document book 48B, tab 18, DND 289234.
450. Testimony of Capt Hope, Transcripts vol. 147, p. 30050.
451. Testimony of Capt Hope, Transcripts vol. 147, p. 29972.
452. Testimony of Capt Hope, Transcripts vol. 148, pp. 30233–30234.
453. Testimony of Capt Hope, Transcripts vol. 147, pp. 30040–30042.
454. Testimony of LCol Carol Mathieu, Transcripts vol. 172, pp. 35575–35576.
455. Testimony of Capt Hope, Transcripts vol. 148, pp. 30167–30168.
456. Testimony of Capt (ret) Rainville, Transcripts vol. 146, pp. 29703–29706.
457. Document book 48B, tab 15, DND 289206.
458. Testimony of Capt (ret) Rainville, Transcripts vol. 171, pp. 35354–35357.
459. Testimony of Maj Kyle, Transcripts vol. 117, p. 23578.
460. Document book 41E, tab 6.
461. Document book 48B, tab 15, DND 289214.
462. Testimony of Col Labb  , Transcripts vol. 165, pp. 33674–33676.
463. Document book 48B, tab 18, DND 289239.
464. Document book 48B, tab 18, DND 289249.
465. Testimony of LCol Mathieu, Transcripts vol. 172, p. 35564.
466. Testimony of Capt Hope, Transcripts vol. 147, pp. 30082–30084.
467. Document book 48B, tab 18, DND 289234.
468. Testimony of Capt Hope, Transcripts vol. 147, pp. 30053–30055.
469. CFAO 22-3, article 7a.
470. Testimony of Col Labb  , Transcripts vol. 167, pp. 34333–34336.
471. Document book 48B, tab 18, DND 289236-289237.
472. Document book 48A, tab 6, DND 014647.
473. Document book 48B, tab 18, DND 289261.
474. Document book 48B, tab 18, DND 289240.
475. Document book 48B, tab 18, DND 289259.
476. Testimony of MCpl Countway, Transcripts vol. 143, pp. 29119–29122.
477. Document book 48B, tab 18, DND 289240.
478. Testimony of Capt Hope, Transcripts vol. 148, pp. 30238–30239.
479. Document book 48B, tab 18, DND 289241.
480. Document book 48B, tab 18, DND 289241.

481. As we have seen, Capt Hope's view was shared by other members of the CARBG, such as Cpl Noonan, Cpl Chabot, Cpl Dostie, and others.
482. Document book 48A, tab 6, DND 014615.
483. The only qualification Col Labbé made with regard to Capt Hope's findings was that excessive force may have been used, but he determined there was no criminal intent and directed Capt Hope to provide more information for Col Labbé to use in writing his own report.
484. Testimony of Capt Hope, Transcripts vol. 148, pp. 30170–30176.
485. Testimony of Capt Hope, Transcripts vol. 147, p. 30093.
486. Testimony of Capt Hope, Transcripts vol. 148, pp. 30166–30168.
487. Testimony of Capt Hope, Transcripts vol. 148, p. 30153.
488. Document book 50, tab 12, DND 310066, paragraph 7(c).
489. Document book 48AB, tab 1, DND 296094.
490. Document book 48AB, tab 1, DND 296133.
491. Document book 50, tab 12, DND 310066, paragraph 7(c); and testimony of VAdm Larry Murray, Transcripts vol. 152, p. 31105.
492. Testimony of Col (ret) Geoffrey Haswell, Transcripts vol. 101, p. 19854. This concern was expressed further in directives issued by the ADM (Per), LGen Paul Addy, as referred to in a letter from Col Pelletier to Capt Sargent, a chaplain in the CAR, dated May 21, 1993 (NS 098126-098127).
493. Document book 83C, tab 7, DND 054419, Exhibit P-230.
494. Testimony of LCol Steve Moffat, Transcripts vol. 97, p. 19058.
495. Testimony of MCpl Roch Leclerc, Transcripts vol. 139, p. 28368.
496. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36774.
497. Message, "CJFS HQ to CARBG—exclusive for Col Labbé", 2:45 a.m., March 5, 1993, Document book 48B, tab 15, DND 289200.
498. Testimony of Capt (ret) Rainville, Transcripts vol. 146, pp. 29862–29867; and Maj Armstrong, Transcripts vol. 179, p. 36881.
499. Testimony of Capt (ret) Rainville, Transcripts vol. 144, p. 29331.
500. Testimony of Col (ret) Wells, Transcripts vol. 150, p. 30599; and Maj Buonamici, Transcripts vol. 176, p. 36150.
501. Testimony of Maj Kyle, Transcripts vol. 117, pp. 23591–23592.
502. Document book 41E, tab 7, DND 271307; and testimony of Maj Kyle, Transcripts vol. 117, p. 23522.
503. Document book 74B, tab 1, DND 305609, serial 22 and 29.
504. Document book 41E, tab 7, DND 271307.
505. Document book 48AB, tab 3, DND 296207, paragraph 12.
506. Document book 74B, tab 1, DND 305609, serial 22 and 29.
507. Testimony of Maj Kyle, Transcripts vol. 117, p. 23569.
508. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36751.
509. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36771; Document book 48A, tab 6, DND 014648.
510. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36775.
511. Testimony of Maj Kyle, Transcripts vol. 119, p. 24079.
512. Testimony of Col (ret) Wells, Transcripts vol. 150, p. 30626. Capt Hope also understood that Maj Armstrong's report was alleging murder, as did Capt Kyle: testimony of Capt Hope, Transcripts, vol. 147, p. 30008, and Maj Kyle, Transcripts vol. 117, p. 23569.
513. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36810.

514. Document book 48U, tab 3, DND 295655 (although LCol Mathieu says March 5th, it is evident from the surrounding testimony that it is March 6th), DND 295665–DND 295666 and DND 295678; and testimony of Maj Armstrong, Transcripts vol. 178, p. 36796.
515. Testimony of LCol Mathieu, Transcripts vol. 171, p. 35234; and Maj Armstrong, Transcripts vol. 179, p. 36847.
516. Testimony of LCol Mathieu, Transcripts vol. 171, pp. 35228, 35234.
517. Document book 48B, tab 15, DND 289204.
518. Testimony of VAdm Murray, Transcripts vol. 152, pp. 31043, 31190.
519. Document book 48AB, tab 1, DND 296138.
520. Document book 48AB, tab 1, DND 296133.
521. Document book 48AB, tab 1, DND 296094.
522. Testimony of Col (ret) Wells, Transcripts vol. 151, p. 30804.
523. Testimony of Col (ret) Wells, Transcripts vol. 149, p. 30412.
524. Testimony of Col (ret) Wells, Transcripts vol. 149, p. 30402.
525. Testimony of Col Labbé, Transcripts vol. 165, p. 33764, and Col O'Brien, Transcripts vol. 151, pp. 30961–30966, 30977.
526. Testimony of Col (ret) Wells, Transcripts vol. 151, p. 30885.
527. Testimony of Col (ret) Wells, Transcripts vol. 149, pp. 30421–30422.
528. Testimony of Col (ret) Wells, Transcripts vol. 149, pp. 30409–30410.
529. Testimony of Col Labbé, Transcripts vol. 166, p. 33909.
530. Document book 75A, tab 19, DND 309638, serial 699.
531. Document book 48A, tab 6, DND 014648–DND 014649; and testimony of Maj Armstrong, Transcripts vol. 178, p. 36772, 36816; and Maj Kyle, Transcripts vol. 117, p. 23569.
532. Document book 41E, tab 11, DND 059368.
533. Document book 66C, tab 10, DND 369276.
534. Testimony of Maj Marc Philippe, Transcripts vol. 159, pp. 32344–32345.
535. Testimony of Maj Philippe, Transcripts vol. 159, p. 32491.
536. Document book 90, tab 9, DND 415348.
537. Document book 90B, tab 16, DND 428948, p. 2/10, paragraph 7.
538. Testimony of Maj Buonamici, Transcripts vol. 176, p. 36271.
539. Document book 48A, tab 6, DND 014588.
540. Document book 77, tab 1, DND 345592.
541. Document book 50, tab 12, DND 310066, paragraph 7(c).
542. Document book 48B, tab 15, DND 289194.
543. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36767.
544. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36770.
545. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36771.
546. Document book 74B, tab 1, DND 305606, serial 59, “damage control”.
547. Testimony of Maj Armstrong, Transcripts vol. 178, pp. 36771–36772.
548. Testimony of Maj Armstrong, Transcripts vol. 178, p. 36775.
549. Testimony of Maj Armstrong, Transcripts vol. 178, pp. 36773–36774.
550. Document book 75A, tab 18, DND 361047, serial 567.
551. Document book 48A, tab 6, DND 014648. When interviewed by the Military Police, Maj Parsons told them that he understood Maj Armstrong to be alleging murder.
552. Document book 83C, tab 7, DND 054419, Exhibit P-230.
553. Document book 48B, tab 15, DND 289203; Document book 75A, tab 18, DND 361047, serial 565.

554. Document book 48B, tab 15, DND 289200.
555. Document book 48B, tab 15, DND 289200.
556. Testimony of Col Labb , Transcripts vol. 167, p. 34286.
557. Document book 48B, tab 15, DND 289205.
558. Testimony of Maj Armstrong, Transcripts vol. 180, p. 37275.
559. Document book 75A, tab 18, DND 309628, serial 580.
560. Document book 75A, tab 18, DND 303927-DND 309628, serial 579 and 580.
561. Testimony of Col Labb , Transcripts vol. 165, p. 33589, and vol. 164,
pp. 33369-33375.
562. CFAO 22-3, article 7a.
563. The initial newspaper article on the March 4th incident appeared March 6, 1993,
and the next article appeared April 21, 1993 (Document book 48AD.1, tab 2,
DND 397622; and Document book 48AD.1, tab 4, DND 397625).
564. Testimony of Maj Armstrong, Transcripts vol. 180, p. 36788.
565. Document book 41E, tab 7, DND 271307.
566. Document book 48B, tab 15, DND 289200.
567. Document book 74B, tab 1, NS 00058, serial 22.
568. Document book 74B, tab 1, DND 305609, serial 29.
569. Document book 48B, tab 15, DND 289206.
570. Testimony of Col Labb , Transcripts vol. 165, p. 33676.
571. Testimony of Col Labb , Transcripts vol. 165, p. 33607.
572. Testimony of Maj Armstrong, Transcripts vol. 180, p. 37275.
573. Testimony of Col Labb , Transcripts vol. 165, pp. 33774-33775.
574. Testimony of Maj Philippe, Transcripts vol. 159, p. 32376.
575. Testimony of Col Labb , Transcripts vol. 165, p. 33840.
576. Testimony of MCpl Favaroli, Transcripts vol. 132, pp. 26621-26623.
577. Document book 48B, tab 19, DND 289275.
578. Testimony of LCol Mathieu, Transcripts vol. 172, p. 35559.
579. Document book 48AB, tab 2, DND 296155-296156.
580. Document book 48G, tab 3, p. 3/13, paragraph 4.
581. Document book 48AB, tab 2, DND 296155-296167.
582. Document book 48G, tab 3, p. 3/13, paragraph 3.
583. Document book 48AB, tab 2, DND 296152.
584. Document book 48AB, tab 2, DND 296155-296156.
585. Testimony of Col (ret) Michael O'Brien, Transcripts vol. 174, p. 35982; and
VAdm Murray, Transcripts vol. 154, pp. 31478-31480.
586. Document book 90B, tab 16, DND 428950.
587. Document book 90B, tab 16, DND 428950. "Throughout my dealings with
Col O'Brien he stressed that NDHQ should not be looking behind what the
Comd CJFS was reporting. This attitude, combined with Col Labb 's decision
not to forward the unit investigation, appeared to indicate a conscious desire not to
have higher Headquarters look too deeply into what was going on in Somalia".
588. Document book 48G, tab 3, p. 7/13, paragraph 13.
589. Document book 90B, tab 16, DND 428954.
590. Document book 90, tab 9, DND 415347.
591. Testimony of Maj Philippe, Transcripts vol. 160, p. 32604.
592. Testimony of LCol Mathieu, Transcripts vol. 171, pp. 35310-35315; and
Capt (ret) Rainville, Transcripts vol. 145, pp. 29585-29589.
593. Testimony of Cpl Smetaniuk, Transcripts vol. 138, pp. 28008-28012.

594. Document book 40A, tab 4, DND 014010; and testimony of VAdm Murray, Transcripts vol. 155, p. 31544.
595. Document book 53A, tab 24, DND 015261. There is a typographical error in this transcribed version of LCol Mathieu's handwritten field notes. LCol Mathieu's original handwritten field notes state this information clearly, although a photocopy of his field notes (Document book 48X, tab 1, DND 298719) is difficult to read.
596. Document book 48AB, tab 1, DND 296092.
597. Document book 48B, tab 23, DND 289327.
598. Testimony of Maj Armstrong, Transcripts vol. 179, pp. 36902–36905.
599. Testimony of Maj Armstrong, Transcripts vol. 179, pp. 36904–36905.
600. Document book 48AB, tab 13, DND 413729; and testimony of Maj Armstrong, Transcripts vol. 179, pp. 36904–36905.
601. Testimony of VAdm Murray, Transcripts vol. 154, p. 31482.



OPENNESS AND DISCLOSURE OF DOCUMENTS

In the conduct of our investigation we encountered two unanticipated but related obstacles that, in our view, cast a large shadow on the degree of co-operation exhibited by the Department of National Defence (DND) in its dealings with our Inquiry as well as on the openness and transparency of the Department in its dealings with the public. Through its actions, DND hampered the progress and effectiveness of our Inquiry and left us with no choice but to resort to extraordinary investigative processes to discharge our mandate appropriately.

The first obstacle relates to compliance by DND with our orders for production of documents under the *Inquiries Act* and the delays and difficulties we faced in dealing with the Somalia Inquiry Liaison Team (SILT).

The second obstacle, related to the first, concerned the manner in which DND's Directorate General of Public Affairs (DGPA) failed to comply with our order for disclosure and attempted to destroy Somalia-related documents requested by us. Also related was DGPA's treatment of requests for information about the Somalia incidents made by CBC journalist Michael McAuliffe. This matter became a subject of concern for us, since the documentation requested by Mr. McAuliffe embraced information covered by our order to DND for the production of documents.

Our terms of reference required us to investigate certain matters that inevitably became intertwined with actions and decisions taken by DND in responding to our orders for production of documents and in processing Access to Information requests in relation to documents that were simultaneously the subject of our investigation. As things turned out, these events lent further weight to conclusions we had reached concerning the poor state of leadership and accountability in the upper echelons of Canada's military — issues that have become recurring themes throughout our investigation and this report. These appear as the prevalence of individual ambition, the

blaming of subordinates, and blind loyalty to the military institution over public disclosure and accountability.

The story of DND's compliance with our orders for production of documents and later requests for specific documents might appear to lack the drama of the events that transpired in the Somali desert. However, these issues of compliance evoke much broader policy concerns, such as leadership in the military, allegations of cover-up and, ultimately, the openness and transparency of government — concerns that are of great importance to those planning the future of the Canadian Forces and, indeed, to government and Canadians in general.

The *Inquiries Act* gives commissioners appointed under its terms broad powers of investigation and the right of access to any information considered relevant to the subject under study. Actions directly or deliberately leading to delay in producing documents, or the alteration of documents and files ordered for the purposes of fulfilling a mandate under the *Inquiries Act*, should be seen by all Canadians as an affront to the integrity of the public inquiry process, to our system of government, and to themselves as concerned citizens. In that light, the story of non-compliance with the orders of a public inquiry and the role played by SILT in that story, which is recounted in the following pages, becomes all the more shocking.

On the surface, the events described here suggest either a lack of competence or a lack of respect for the rule of law and the public's right to know. As we dug deeper, the difficulties we encountered involved tampering with or destruction of documents. The seriousness of these actions and their impact on the investigation conducted by our Inquiry demand that we recount these events in detail.

THE SOMALIA INQUIRY LIAISON TEAM

DND recognized, at a very early stage, the need to create an entity to assist us and co-ordinate various aspects of the Department's actions in related matters. But as it turned out, these two purposes were constantly in conflict. Either military officers and officials at National Defence Headquarters (NDHQ) failed to appreciate this, so accustomed had they become to treating all crises as situations to be tactically managed and controlled, or it was a calculated strategy to obstruct and discredit our Inquiry. Even if it were the former, which would indicate a degree of naïveté at NDHQ, the result was the same. Our work was made far more difficult than it should have been, and our Inquiry was needlessly and expensively protracted. In the end, these tactics significantly impeded our work but at a heavy cost to the reputation of the military and to the trust that Canadians had heretofore shown in the effectiveness of the public inquiry process.

Even before the official announcement of this Inquiry, DND began to assemble a team and attend to personnel and administrative matters.¹ SILT was established officially in April 1995 by a directive from Gen de Chastelain, Chief of the Defence Staff (CDS), and John McLure, the Acting Deputy Minister.² The directive established SILT within the ADM (Policy & Communications) Group “to act as a focal point for all matters related to the Inquiry”. The mandate of SILT was specified as

- collating and cataloguing all documents, notes, e-mail, etc. created or held by the Department on the CF participation in the UN mission in Somalia;
- assisting the Inquiry in obtaining relevant information from the Department;
- responding to requests for information from the public and Inquiry witnesses;
- acting as the focal point for media inquiries; and
- co-ordinating the appearances of Department witnesses before the Inquiry.

When it was first created, SILT comprised four members: the director of SILT, a public affairs officer, a secretary, and an administrative clerk. They reported to the Associate ADM (Policy & Communications), who at that time was MGen Boyle.

Additional resources were authorized to establish the SILT office.³ As the number of document demands grew, SILT expanded in an attempt to keep up with those demands. Ultimately it had to struggle with inadequate resources because of its initial “misestimate” of what would be required to do the job.⁴

The CDS directive also addressed the issue of the Department’s co-operation in providing documents to us via SILT. It directed that all of DND/CF was required to comply with SILT’s requests, that “[no] documents, in whatever form they exist, shall be withheld from the SILT”, and it gave SILT the authority to contact anyone it required to fulfil its mandate.⁵

In June 1995, LGen (ret) Fox was appointed Special DND/CF Adviser to “advance the CF/DND interests in respect of all matters under the mandate of the Somalia Commission of Inquiry”. LGen (ret) Fox had five primary responsibilities:⁶

1. to co-ordinate and plan the Department’s position on all issues related to the Inquiry;
2. to ensure the development and preparation of the Department’s position;

3. to instruct counsel on the Department's position before the Commission of Inquiry;
4. to represent the Department's interests at the Sub-Committee of the Joint Management Group; and
5. to superintend all activities of SILT.

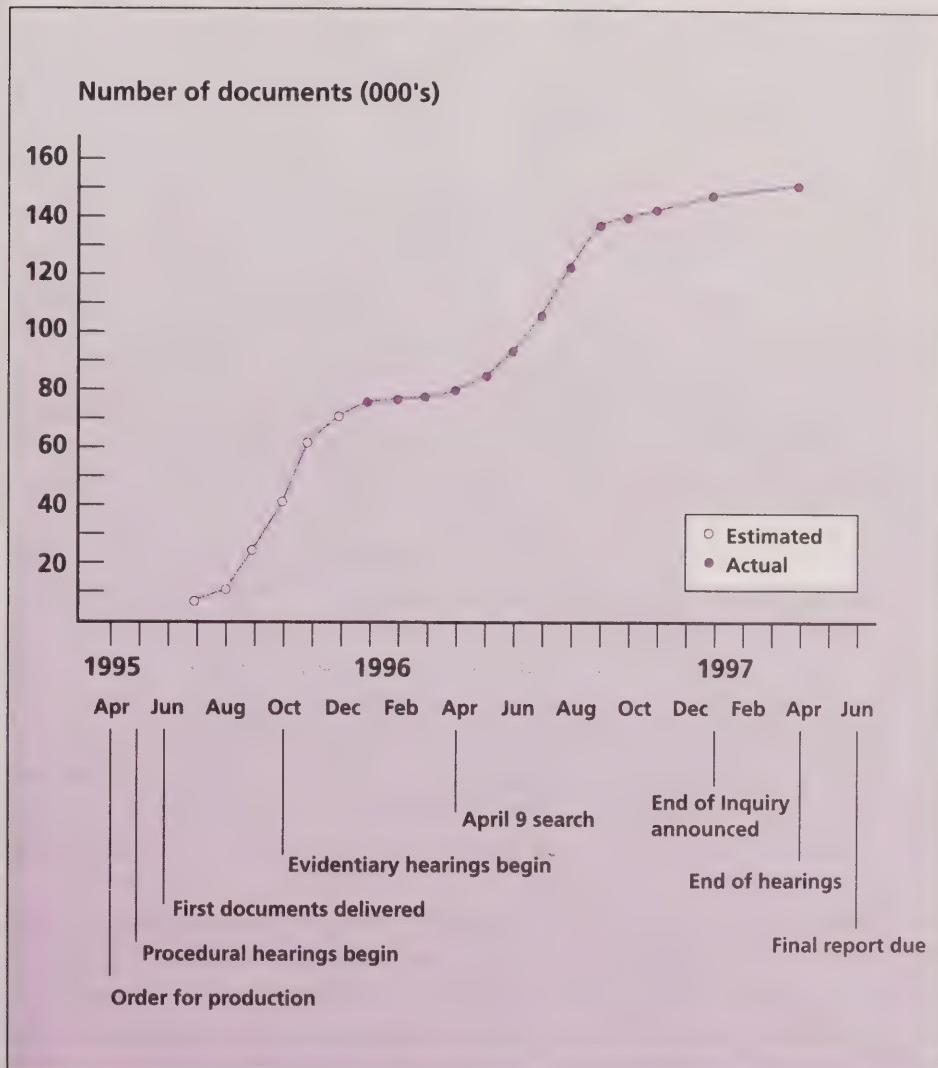
This order expresses the inherent contradiction built into SILT between managing the Department's position or political response to the Somalia affair and assisting us to investigate it and the conduct of the CF in relation to it. The predominance and priority given to managing the Department's responses are also clearly evident. LGen (ret) Fox was given the responsibility of overseeing SILT as part of his duties. He reported to LGen Boyle, who had recently been promoted to ADM (Personnel).

Orders for Production

One of the most important factors enabling us to begin our investigation was the receipt of Somalia-related documents. We sought such information from many sources but gave three formal orders for production to the Privy Council Office (PCO), the Department of Foreign Affairs and International Trade (DFAIT), and the Department of National Defence.⁷ The first two organizations had relatively few Somalia-related documents; it was DND that held the vast majority of the materials we would require.

The order dated April 21, 1995, addressed to the Minister of National Defence, required the production, within 30 days, of all documents relevant to our terms of reference in the possession or control of the Department and the Canadian Forces.⁸ The Department applied for an extension of time and by our order dated May 29, 1995 it was granted an extension until June 30, 1995.⁹ See Figure 39.1 for a graphic representation of the adequacy and timeliness of production of documents.

Figure 39.1
Documents Received and Processed by the Inquiry



It was on June 30th that counsel for the Government of Canada wrote to us outlining the documents that had been identified pursuant to the order, providing lists of those documents and stating that all documents listed had been provided to us or would be provided shortly. Counsel also stated their belief that the requirements of the order of April 21, 1995 had been met but that the Department, through SILT, would continue its efforts to provide additional materials to us and to respond to our requests.¹⁰

Efforts by SILT to Obtain Documents

In the weeks before this order, SILT had already begun obtaining documents relating to Somalia.¹¹ Requests, in the form of telephone calls and memoranda, were made to offices within NDHQ asking for documents. SILT's idea was to begin at the top of the chain of command and move downward as the search extended to more documents. In this way, policy documents would be collected first and then the search would extend to working documents relating to the Somalia deployment.

This method was almost guaranteed to protect the military's interests. If a cover-up is suspected, a top-down investigation courts the risk of failure. By definition, cover-up is invisible at the top and contains no clues at that level as to its lower origins. Only an investigation that starts at the bottom of the process has any hope of uncovering the facts that are eventually hidden.

To cite an analogy from history: if SILT had been charged with gathering documents about Watergate, its strategy would have been to ask President Nixon and the White House for all available documents and then follow these down through the system. The secret tapes would never have been discovered.

Originally, we accepted SILT's profession of good faith, repeated by the CDS and the Minister of National Defence, and waited to see what emerged. To do otherwise would have shown a degree of skepticism in our institutions unwarranted by Canadian traditions and the history of previous inquiries. And so we embarked on what proved to be a long and disillusioning process.

The director of SILT, Col Leclerc, made verbal requests because he felt that these would allow him to gauge better the level of co-operation he received. He considered the co-operation of senior staff in NDHQ in response to his verbal requests to be excellent. He also felt that the general response to SILT was excellent in that there were no complaints about having to provide the documents.¹² That positive response, however, did not mean that everything required was being provided.

Upon receipt of our order, SILT extended its search for documents to all relevant documents. SILT sent a formal request in the form of a message dated June 2, 1995 to the commanders of Land Force, Maritime, and Air commands, asking that these three headquarters take the appropriate measures to provide the required documents to SILT no later than June 9, 1995.¹³

Many of the documents were in the possession of SILT by mid-June, but it would turn out that many crucial documents arrived at SILT later. Other documents had been destroyed or lost and were never made available to us. Examples of documents that were not provided at that time include documents from the Directorate General of Public Affairs and National Defence Operations Centre (NDOC) logs from headquarters.¹⁴

SILT's initial estimate was that there were 7,000 documents.¹⁵ The number of documents it received in the summer of 1995, however, quickly exceeded that estimate by a huge amount. The sheer volume meant that SILT began sending documents to us without first registering and copying them.¹⁶ According to its records, by September 1, 1995, SILT had received and delivered to us approximately 30,000 documents.¹⁷ This would turn out only to be a fraction of the final amount.

Receipt and Management of Documents

We always recognized the importance of the documents issue. When the number of documents started to grow beyond SILT's initial estimate, we retained specialized consultants to implement systems to handle the increased volume. From September 1995 until the end of the hearings, we employed at least 10 and as many as 20 persons full-time in document management.

We put into place a number of systems to track, manage, and review the documents, including a data base to manage the paper documents received and a specialized software program, Folio Views, to provide electronic access to electronic files received.

To ensure full control of the documents, our staff developed a standard procedure to handle documents received. Documents were processed, catalogued into a data base, and then categorized according to the issues they addressed.

Once a document was received, the first step consisted of numbering every page using a unique identifier generated by and recorded in our data base system. In the case of documents received as computer disks, each file was printed out onto a paper copy and then processed. Once numbered, a document could be unambiguously identified by the number on its first page. In addition, a procedure was used to identify documents that contained other documents, for example, a memorandum attached to a covering letter. It

was important to identify these documents within documents to have full control of the information we received.

Next, each document was catalogued by entering key descriptive information into a relational data base system. This allowed us to retrieve documents by several criteria, including the title of the document, the type of document, its date, and information about the document's author and recipient.

A critical element of our ability to deal with huge volumes of documents was the review of the documents after they were recorded in the data base. To allow a systematic review, a list of issues of importance to us was developed. The purpose of the review was twofold: to identify documents that were not relevant to our work and to catalogue those that were relevant by identifying them with applicable issues on our list.

This categorization of the documents, along with the information used to catalogue the documents, allowed our staff the flexibility to research issues, prepare for hearings and create hearing books.

Because not all documents were complete and questions inevitably arose in working with large volumes of material, SILT was responsible for assisting us in obtaining additional relevant information.¹⁸ Formal requests were numbered sequentially for ease of reference. These numbered requests typically asked SILT to supply missing documents or missing portions of documents or to provide other additional information. As an integral part of document management, a data base was used to record and manage these requests. Apart from describing the particulars of the information requested, we assigned to each request a priority of high, medium or low to reflect its relative urgency.

Initial Inadequacies in the Department's Production of Documents

On the assumption that there would be only 7,000 documents in total, SILT arranged to have all documents scanned into an electronic format to facilitate search and retrieval. Initially this undertaking began in-house. As the size of the task grew, however, an outside company was retained to complete the job. By early September 1995, about 30,000 documents had been scanned. At that point, SILT decided not to scan any additional documents but simply to provide them to us in paper form.¹⁹

At first, the documents we received were identified by a number assigned by SILT (the 'SILT number'). In addition, when the documents were scanned, a 'control number' was also used to identify the document in the electronic information base. Later the SILT number was discontinued in favour of the

control number. After SILT's decision to discontinue scanning, however, many thousands of documents arrived over a two- to three-month period without any type of reference number assigned by SILT. In November 1995, documents began to arrive under a new identification system using so-called R numbers. This method had no apparent connection with the earlier systems, nor were we alerted to the fact that this was a new system being used by SILT. The meaning of the new designation was clarified only after Commission counsel wrote to SILT asking for an explanation of the R-numbered documents.²⁰ As a consequence, we found it necessary to modify the system several weeks after the changes were implemented, resulting in both inconvenience and time delays.

A problem that arose several months later and that was exacerbated by the absence of a reliable tracking system at SILT was the elimination of duplicates.

SILT's delivery of documents showed that little effort had been made to organize the material. Typically, thousands of documents would arrive in unmarked boxes accompanied by only a transit slip and a brief covering letter containing little useful information.

Worse still, documents had pages missing; documents did not contain attachments or appendices; documents were unintelligible as a result of poor photocopying (we received virtually no originals); documents referred to in other documents could not be found; and documents that belonged together were not delivered together. Often what we received were pieces of information rendered nearly useless by an absence of context and because of inconsistent quality and unreliable integrity. Huge amounts of time were ultimately spent searching for missing attachments and attempting to reconstitute documents or sets of documents from individual fragments.

SILT's Difficulties in Responding to Numbered Requests

To address our concerns about SILT's response to the order for document production we made numbered requests to SILT asking the Department for additional information. Using the protocol we had established with SILT, requests were made by Inquiry staff for better copies of documents, missing pages, additional documents, and other information. In many instances, these requests were handled by SILT in a prompt and helpful manner. However, we had to rely on SILT and the Department for the processing of virtually all of these requests and in many cases, the responses were disquieting.

SILT's Slow Response

The most troublesome aspect of the SILT's response was its lack of timeliness. As part of each numbered SILT request, we assigned a priority to the request and a target date for SILT's response. Responses were often received after the target date. Although interim responses were sometimes received, many requests were resolved only several months after the target date, and others were never resolved satisfactorily. Also, even with a priority system, the response time and the urgency of the request were not correlated.

In January 1996, we were concerned about the tardiness of SILT's responses and assessed all numbered requests we had made since September 1995. The result: of the 196 requests at that time, 62 per cent remained outstanding after the target date, with the average delay being 40 days.

Most of the documents we were interested in from PCO and DFAIT came pursuant to orders for production to the two organizations, but a few requests were made to DFAIT through SILT. Unfortunately, these relatively few requests were not answered speedily. For example, in October 1996, we requested a list of records relating to weekly executive committee meetings of senior departmental staff at DFAIT from July 1992 to August 1993.²¹ DFAIT's response (through the Office of Counsel for the Government of Canada) came in March 1997, six months later, only to say that it had no such material.²² In another example, a request was made for materials documenting interdepartmental meetings relating to Eastern and Southern Africa.²³ We were advised to expect receipt of those documents by early December 1996,²⁴ but nothing was received by late March 1997, when our evidentiary hearings concluded.

Because of the breadth of our mandate, we consistently stated that SILT was to provide all requested documents relating to our terms of reference, and we would decide on the matter of their relevance. In at least two cases, however, government counsel questioned the relevance of the documents requested and wrote to ask for an explanation. In one example, we requested the briefing materials of a particular cabinet minister. Government counsel failed to understand the relevance of these materials because that minister had been briefed only after the Canadian Forces members participating in Operation Deliverance had been redeployed to Canada. The matter was resolved only after we pointed out that the Inquiry's mandate included matters of response and the aftermath of the in-theatre incidents.²⁵ This type of interim exchange did little to expedite the progress of the requests, especially since any clarifications could have been made by telephone.

Inexplicable Difficulties

Other aspects of the responses were also troubling and difficult to understand. For example, two numbered SILT requests,²⁶ made in the fall of 1995,

asked for minutes and agendas for Daily Executive Meetings (DEMs) and related documents. These high-level meetings were held on a regular, almost daily, basis. It is difficult to imagine that the minutes and other documents that relate to them are not all kept together in a secure facility and easily retrievable.

The fact is, however, that the request for DEM minutes was outstanding for over three months before a response was received. The first DEM documents we received from SILT arrived inexplicably without a covering letter, without an index, and without reference to the original request. The records were also incomplete and not arranged in any apparent order. It was only after intervention by our senior counsel that a more acceptable response was provided.²⁷

That response did not, however, satisfy all the requests for information in respect of DEMs, and many requested documents remained outstanding. The partial explanation that “the older agendas are not readily available and/or may have been destroyed” was vague and unsatisfactory.²⁸ In addition, an analysis of SILT’s responses revealed inconsistencies in the information provided. For example, agendas were missing for some DEMs, but more alarming was that agendas existed for days on which SILT had stated that no meetings were held.²⁹ The Department’s response was inconsistent with an organized and complete set of records being held in a central location. Yet the absence of such an approach would be puzzling given the high level and potential importance of these records.

The value of the DEM-related documents was in their identification of the issues discussed at those meetings and their indication of what information was available about those issues. It was therefore unsatisfactory that these hundreds of outstanding documents arrived only in October 1996,³⁰ leaving us less time than we had anticipated to analyze the information received and make further inquiries for the hearings then going on.

Once all available DEM-related documents from 1990 to 1995 were received, we carefully reviewed their contents. A pattern emerged from the DEM minutes whereby less and less information became available over time about the sensitive issues relating to Somalia.

Taking the records up to 1992 as a baseline, minutes were produced for the large majority of DEMs, and those minutes gave a good idea of what was discussed at the meetings. In 1993, however, at the time of the in-theatre events, references to important incidents in Somalia were suspiciously sparse, given the high profile of issues such as the incidents of March 4th and March 16th. By contrast, the minutes did record matters such as why mail for the forces in Belet Huen was experiencing continual delays.³¹ The pattern continues through 1994–95, where DEM minutes are kept less frequently and contain less content, to the point where they are not kept at all

in the latter months of 1995.³² This pattern is inconsistent with the Department's earlier practice of keeping minutes and with the written departmental procedure, which states "Minutes covering DEMs will be prepared by D NDHQ Sec and distributed to all concerned".³³

When the outstanding DEM minutes were delivered in October 1996, SILT indicated that briefing materials were available upon request: "A number of briefings were presented at DEM/Post-DEM, many of which did not relate to Somalia. It is requested that the Commission identify the specific briefings which are of interest to them".³⁴

In November 1996, after reviewing the DEM minutes, we asked for briefing notes, background materials, and other documents relating to 46 matters discussed or referred to in the DEMs and Post-DEMs.³⁵ By the end of January 1997, we had received no response and repeated the request.³⁶ We also emphasized that the new deadline for a final report greatly increased the urgency of the situation and asked SILT to send whatever materials it had gathered by early February.

SILT's reply came only in March 1997, as the Inquiry was in the process of winding down.³⁷ Of the 46 requests, many of the documents could not be located; in other instances, responses were incomplete. From these results and SILT's explanatory notes, it appeared that the search had been ad hoc and that there was no orderly system of storage and record keeping of these materials. SILT added that the minutes often did not contain enough information to allow retrieval of the materials referred to and that copies of the briefings were rarely left with the NDHQ secretariat or handed out to attendees.

The search for information related to DEMs began in late 1995 and ended, as our last witnesses were being heard, with a disappointingly large number of materials of interest to us ultimately being unavailable.

In January 1996, Inquiry staff made request number 239 to SILT for copies of the Red Book since 1990.³⁸ The Red Book was an annual document containing guidance from the Chief of the Defence Staff to commanders about where they should focus their efforts. This is a well recognized and important document that should have been readily accessible and easily reproduced.

More than four months later, we received boxes of files, once again unaccompanied by any letter, index, or reference to any of our requests. These boxes contained some Red Book material, but in no way can this response be viewed as satisfactory.

This example illustrates the labours involved in the examination of documents. The copies of Red Books should have arrived in a complete package. Instead, the materials we received were piecemeal, incomplete, and intermingled with other documents. After considerable effort, Inquiry staff

were unsuccessful in reconstructing the requested documents from the fragments received. In particular, they lacked sufficient material to reconstruct a copy of the Red Book in effect during the pre-deployment period.

A reminder had been sent to SILT in June 1996,³⁹ but we received no response until February 1997, when a copy of this key Red Book was received in response to a different request for a related document.⁴⁰ SILT offered no explanation for the delay of more than one year in providing the requested information.

In December 1995, we requested a number of documents relating to high-level meetings, including the agendas for Defence Council meetings from 1990 to 1995.⁴¹ The Defence Council is a forum for discussion to inform senior management and to facilitate decision making. It is chaired by the Minister of National Defence, and its members include the CDS, the VCDS, the DM and other senior officials. The Defence Council is a main avenue for briefing the Minister of National Defence on developments within the DND/CF and should normally meet once a month.

In March 1996, SILT replied that in the period 1990 to 1995, there appeared to have been only six such meetings,⁴² a surprisingly low figure. After additional research, the final response in October 1996 was that one of the six meetings had been cancelled, no minutes were produced for another, and two sets of minutes could not be located.⁴³ The result was that the minutes of only two meetings were available in the six-year period.

In February 1997, we requested documents relating to communications with the Minister of National Defence about our request for extensions. We were interested in documents that either advised the Minister about the matter or documents that contained the views of the Minister.⁴⁴ After we received no response, a reminder was sent in March.⁴⁵

Later that month, SILT's reply was that none of the documents described in that request could be located.⁴⁶ SILT added that because the Honourable Doug Young had been appointed minister (replacing the Honourable David Collenette) "any papers from his predecessor would have been sent to the Archives". SILT also wrote that we had received documents from the PCO and that "[a]ny additional documentation would likely fall into the categories of Cabinet Confidences or Solicitor/Client Privilege".

These comments are troubling. Any reply by Mr. Collenette to his officials would certainly have remained within the Department. It is not the practice to gather all the documents signed by an outgoing Minister and send them to the archives. Similarly, as regards correspondence sent to the Minister, any copies retained by the authors were not archived. Even more unsatisfactory is SILT's uncertain comment that documents were "likely" to

be privileged. It appears that SILT did not bother to search for such documents, on the assumption that these were protected by a privilege. Documents that are not privileged were required to be released to us. Documents for which privilege was claimed should have been identified, and a list of such documents should have been sent to us.⁴⁷

A final example along these same lines is our request in May 1996 for the Combined Joint Task Force (CJTF) Somalia operations plan.⁴⁸ This key document sets out the whole concept of the operations, missions, and tasks in Somalia. SILT's reply in August 1996 was that these documents could not be found in the Canadian Forces. We cannot understand how the Department was unable to find such an important and high-profile document over a three-month period following our request.

E-Mail

SILT's mandate, as specified by Gen de Chastelain in his April 1995 directive, included collating and cataloguing "all documents, notes, e-mail, diskettes, videos, etc." relating to the mission in Somalia.⁴⁹ Despite this and our order to produce all documents and other recorded information, very little was received in the way of e-mail, either in paper copy or in an electronic version. As this was a matter of considerable interest to us, on May 21, 1996 the Commission Secretary wrote to the head of SILT asking about the status of the disclosure of e-mail.⁵⁰ By June, SILT had still not responded, and we wrote a second time asking for a response.⁵¹

SILT replied that it had requested detailed information about the e-mail systems in place at NDHQ and the CF since 1992 to allow us to assess its use.⁵² This appeared to miss the point completely; we wanted copies of the e-mail transmissions, not information about e-mail systems. A letter making that clear was sent to SILT.⁵³ After additional discussion, SILT's final response was that it had passed on all e-mail that the Department was aware of and that it considered the matter closed.⁵⁴ The matter might have been closed, but Inquiry staff did not feel that they had received much co-operation in obtaining e-mail communications that might have been relevant to our mandate.

The significance of e-mail is that it is often used to communicate internally within an organization and may be more candid than formal correspondence. One significant example was brought to our attention by counsel for one of the parties with standing. That was a series of e-mail transmissions concerning an attempt by MGen Vernon to organize several colleagues to present evidence before us and LGen Reay's response to that effort. LGen Reay's reference to "the idea of producing the King James Version of events"⁵⁵ and

his statements "How we respond is entirely up to us and we control what is written",⁵⁶ and "Equally, every time the Commission asks for amplifying info or more briefs or whatever, we will respond and we control how we respond"⁵⁷ are especially noteworthy.

In his testimony, LGen Reay conceded that these words could be interpreted to mean that he wanted to control the flow of information to the Inquiry, but he added that this had not been his intention.⁵⁸ As it turns out, what LGen Reay said he did not mean was precisely what was reflected in our rueful experience with the disclosure of documents.

Although we were aware of the e-mail transmissions, reliance was placed on SILT to provide copies of the e-mail for the purposes of the hearings. It is of interest to note that even though the quantity of e-mail made available to us was incredibly sparse, this particular example was available and easily retrieved by SILT.⁵⁹ However, this particular message was not actually disclosed to us until we advised senior officials that we were already in possession of a copy obtained from another source.

This example illustrates the candour in a less formal communication medium such as e-mail and the value of such records for our work. MGen Vernon testified that it was an everyday occurrence for members of the CF to use e-mail or the telephone to communicate about "demi-official" matters.⁶⁰ He described demi-official correspondence as being private correspondence and contrasted it with official correspondence which "belongs to Her Majesty".⁶¹ He explained that demi-official communications were a normal method of staff work: establishing consensus through this less formal liaison before the results are presented to superiors for official consideration. He also testified that the "demi-official net" accounts for a great deal of the consultation and discussion behind official decisions.⁶²

From this testimony, it is clear that had it been more available to us, e-mail could have proven invaluable as a window on the frank consultations that were held on that "net" every day.

Substituted Documents

Another of the frustrations we encountered was the way SILT responded to a request for a particular document by providing a related but different document.

Following a tour of the NDOC for Inquiry staff, we wanted to know what procedures existed for the handling of information received by that office. In October 1995, we requested a copy of the standing orders of the NDOC in effect during Operation Deliverance.⁶³ SILT's response was to enclose a copy of the National Defence Operations Centre Instruction, October 1995

(two years after Operation Deliverance), with the explanation that “this is a ‘living’ document which is updated as required but at least reviewed annually” and that it would continue to look for a copy of the Instruction dating back to 1992/1993.⁶⁴

By June 1996, eight months later, there had been no further response from SILT. We wrote again to ask what progress had been made to locate or reconstruct the 1992/1993 version of the document, and if none, we wanted copies of the Instruction used in the two annual reviews that bracketed Operation Deliverance.⁶⁵ SILT replied in October (one year after our original request) that the document had not been found and that it was unable to reconstruct it. SILT added that “the Instruction is a ‘living’ document and as such there is no utility in retaining a copy which is no longer current. In fact, retention of ‘living’ documents which are not current often leads to confusion and can be a serious liability” and considered our request to have been fulfilled.⁶⁶ The result was that one year after our request, the only document that had come into our possession was current but not relevant to the period we had specified and was therefore of no use to us.

A similar situation arose when we requested a copy of a two-page summary written by VAdm Murray and referred to in another document.⁶⁷ SILT’s response was to send a different document “concerning the same issue” and to state that “[s]ubject to further direction from [us], this request will be considered closed”.⁶⁸ It is difficult to understand how providing “a new document concerning this same issue” in any way satisfied the original request.

SILT’s Need for Clarification

Beyond the failure to receive the materials requested, a considerable amount of energy was spent in clarifying matters for SILT or attempting to get SILT to respond to the request made.

An example already discussed concerns SILT’s research into e-mail systems instead of providing us with copies of the e-mail transmissions themselves.

Another example is our request for DEM-related documents. In June 1996, more than six months after the initial request for these types of documents, SILT did not appear to understand fully what was being requested. We wrote to SILT regarding this matter: “Your response on this issue is unsatisfactory in a number of respects. The main problem is that it does not appear to respond directly to [the] request but, rather, it appears to build on your response to another request dealing with different material.”⁶⁹

A final example is that of request number 096.⁷⁰ During a 1995 general court martial case, a witness stated that there was a sheet of paper inside a guardhouse that outlined the duties of the guard. In October 1995, request

096 asked SILT to provide a number of documents, including the sheet outlining gate guard duties. Our request made specific reference to page 168 of the general court martial documents, where the statement about the sheet was made.

Eight months later, in June 1996, SILT replied that this outline of guard duties could not be located and that SILT officials did not believe that it existed.⁷¹ We had little confidence in this response, however, because SILT also had difficulty finding the reference on page 168 of the court martial transcripts and stated, erroneously, that there was no such reference.

Unavailable Documents

We were also often frustrated in our attempts to get documents known to have existed but that were unavailable to us. Examples include the *National Defence Act Review*, the Chief Review Services (CRS) studies, and the Kipling Reports.

In September 1995, Inquiry staff requested a copy of the *National Defence Act Review*.⁷² Other documents in our possession describe this work as a review of the military justice system conducted internally by the Department and presented to the Defence Management Committee (DMC) in January 1994. A month later SILT replied, stating that the document was under consideration by the Judge Advocate General (JAG) and that it was "not possible to give an exact date when the request will be answered".⁷³

In February 1996, SILT forwarded to us a letter from the JAG stating that the Department had established a process to review the *National Defence Act* and brief the DMC, and ultimately the Minister, on recommended changes to that act. Although the consultation phase had ended in the summer of 1994, the report was not yet finalized, and the draft would not be released to us.⁷⁴

Over a year after the original request, in November 1996, we sent a further letter to see what progress had been made. SILT's response, a month and a half later, was "[a]lthough the current rationale for withholding this documentation remains unchanged, the Office of the Counsel for the Government of Canada remains willing to discuss the process. For these reasons, SILT's perspective is that this request will be considered closed".⁷⁵

After nearly a year and a half, we were no further ahead in obtaining the desired information. We wanted to study the review to understand the areas identified for change by the Department and the nature of those changes. Instead, well over a year after the creation of a draft report, the Department continued to deny us a copy, giving no indication when the report would be available. SILT's final comment on the matter was that it considered the request closed.

In November 1995, we asked for a complete list of the studies prepared by the Chief Review Services in DND since 1991.⁷⁶ The CRS is responsible for the internal investigation of issues, often at the request of senior departmental officials. Its studies were of interest because the Department's own views of issues being investigated could prove quite revealing and helpful to our work. In December, we amended that request, asking for a list of all studies and reports by the CRS since the position was established.⁷⁷ This list was provided in March 1996. In April, we asked for a number of documents of interest from that list.⁷⁸ This request remained outstanding as of August, and we sent a reminder to SILT, increasing the priority of that request.⁷⁹ In December, SILT forwarded the majority of the requested documents. In January 1997, additional documents were forwarded. A number of documents were not included, however, because they had been "destroyed" in June 1994.⁸⁰ No other information was provided about these documents, which included an evaluation entitled "Departmental Evaluation and Accountability Reporting" and an assessment entitled "Public Information", presumably covering the dissemination of information to the public.

In December 1995, we made a high-priority request asking SILT for information about documents known as the Kipling Reports and asking for copies of such reports produced in the years 1993 and 1994.⁸¹ In February 1996 SILT replied that the Kipling Reports are bi-weekly reports compiled by the NDHQ Secretariat to inform senior staff of current DND issues and are based on information supplied by NDHQ directorates. SILT reported that, based on telephone conversations with the NDHQ Secretariat, "all KIPLING Reports from 1993 have been destroyed and copies are not being kept any more".⁸² However, no mention was made of the Kipling Reports from 1994, which we had also requested.

After receiving nothing more on this matter, we wrote back to SILT in December 1996, asking for a more thorough search.⁸³ SILT's response was that a broadened search revealed that all recipients of the report had destroyed the 1993 and 1994 copies according to records disposal guidelines and that the documents were not available in the Department or the government.⁸⁴ Once again, documents that were of interest to us were ultimately unavailable after many months of waiting. Even more disappointing was the fact that a comprehensive search was conducted by the Department only upon a specific request from us and that SILT did not take this step on its own initiative.

The CRS studies and the Kipling Reports are just two examples of the destruction of high-level documents with no apparent regard for the loss to corporate memory. It is understandable that copies distributed to individuals

have become unavailable, but we have more difficulty accepting that the individuals or offices responsible for producing such documents would not retain any records.

The Need to Hold Hearings on Document-Related Issues

Because SILT had failed to deliver all the relevant documents on time, we had no choice but to begin hearings before we had received all the documents. Evidentiary hearings began in October 1995, and as they proceeded through the fall of 1995 and continued through the winter of 1996, we continued to receive, process, and review new documents, including documents of direct relevance to the hearings already under way.

Because of the serious difficulties that we had encountered in obtaining disclosure from SILT, we were obliged to hold public hearings to determine why we were not receiving documents necessary for us to fulfil our mandate and whether this deficiency was deliberate.

Pursuant to our terms of reference, we began hearings in April 1996 related to the integrity of the documents delivered to us. The main issues explored were non-compliance with our orders for production of documents; the alleged destruction and alteration of Somalia-related documents; discrepancies in the NDHQ logs; and missing in-theatre logs.

Alteration and Attempted Destruction of Somalia-Related Documents

Later in this chapter, we detail the complexities surrounding the alteration and subsequent attempted destruction of Somalia-related documents. This issue resurfaced within the DGPA as a result of our order for the production of all relevant documents. While other areas of the Department submitted Somalia-related materials pursuant to SILT's instructions, the DGPA had not complied, although it knew of the requirement. On the contrary, arrangements were made by supervisors in DGPA to destroy documents requested by us to cover up their previous deceptions. This plan was unsuccessful, however, because the arrangements were discovered before they were carried out.

During the hearings, many details of the affair were examined, and witnesses for the most part denied responsibility. It was clear, however, that the Department had failed blatantly to comply with our order for production. The actions of the Department were, we concluded, dishonest and deliberate. To cover the original deception, the severity of misdeeds had escalated from artifice to lies to non-compliance with an order for production and finally to the attempted destruction of evidence.

NDOC Logs

The National Defence Operations Centre at NDHQ was responsible for co-ordinating the flow of communications related to operational matters and was the information centre that received all message traffic.⁸⁵ Any information received from CF theatres of operations was required to be recorded in the NDOC log by the NDOC desk and watch officers.⁸⁶ Col Leclerc testified that the NDOC log was kept by duty officers and contained a record of all message traffic that went through them, that is, telephone calls, messages, and reports from various alert systems that come into the headquarters.⁸⁷

We attempted during the summer of 1995 to obtain the NDOC logs; SILT provided three different ones.⁸⁸ During our review of these, we discovered a number of unexplained anomalies, including entries containing no information, entries missing serial numbers, and entries with duplicate serial numbers. The concern was that there may have been deliberate tampering with these logs.

A military police investigation was launched on October 11, 1995, but it was frustrated by the fact that the computer's hard drive had been reformatted and back-up tapes were not available. The investigation was unable to determine whether the inconsistencies in the logs were the result of tampering and suggested that they were the result of poor operating procedures, insufficient training, and a lack of system audits.⁸⁹

As a result of the military police report, Commission counsel interviewed NDOC personnel and discovered that the computer system in operation during 1993 actually consisted of two hard drives, one that mirrored the other.⁹⁰ The mirror drive was found at NDHQ and, contrary to what had been suggested in the military police report, it had not been reformatted and disposed of, although much of the data had been deleted.⁹¹ As a result, the military police reopened their investigation into the question of tampering. The second investigation revealed no evidence to support the theory that tampering had occurred,⁹² but could not eliminate the possibility.

These investigations did, however, reveal a number of other serious problems with the NDOC logs. Despite the key role the NDOC log would play in any investigation, management and staff did not appreciate its importance and accordingly did not give it priority.⁹³ Most of the problems seem to have resulted from the lack of standing operating procedures with regard to the log and a tendency to bypass this awkward system.

One major problem was the lack of policies and practices with regard to creating and maintaining a complete record of communications from field units to NDHQ. To begin with, the purpose of the log was not clear in the minds of NDOC personnel, and perceptions of the role it played at NDOC varied from one individual to another.⁹⁴ In addition, one officer interviewed stated

that there were no standing operating procedure regarding the inputting of information into the NDOC logs, and a National Investigation Service (NIS) report found that “[s]tandard operating procedures were non-existent”.⁹⁵ The decision about what information was entered was left to the desk officer or watch officer.⁹⁶ When it was decided that information needed to be entered in the log, the fact that NDOC staff received no formal computer training compounded the problem.⁹⁷

A review of the logs shows that there were large gaps in the records of communications that flowed from the in-theatre headquarters of CARBG and CJFS to NDHQ during Operation Deliverance, and in particular after the incident of March 4, 1993. Despite the contention that the NDOC was an “all-informed staff system”,⁹⁸ a clear cause for concern was the fact that the NDOC was not always used for official communications. Operational information was often provided directly to senior NDHQ officers without passing through proper channels, bypassing the information system that was in place. Such a prominent violation of NDOC policy demonstrates an ingrained lack of appreciation for the importance of an accurate record of NDOC activities and a serious problem of discipline within the CF.

The security system in place at NDOC was completely ineffective. One officer stated that typing in a user ID followed by a password gained access to the system, and that he had the passwords for the three desk officers because he was regularly required to access their accounts.⁹⁹ Another noted that he did not need a password to use the NDOC operations log because it was open and running 24 hours a day.¹⁰⁰ The NIS investigation also noted that there might be concern if the public received information regarding how inadequate the NDOC system was during this period.¹⁰¹

The implications of this investigation and of our own review of different versions of those logs is that NDOC logs are not a reliable record of transactions at the operations centre. Even apart from the question of deliberate tampering, the logs were compromised by problems with the data-base system and the absence of proper procedures for the operators.

Operational Logs

Another type of log, in-theatre operational logs, were of great interest to us. In addition to the logs kept by the NDOC operations centre, operational logs were kept daily with respect to the Somalia deployment. “The [operational] log provides an abridged chronological record of all incoming and outgoing information, actions taken and decisions made. It [also] provides a continuous story of the operation in progress, a check upon action yet to be taken and a basis for the writing of the war diary.”¹⁰²

A war diary is a historical record that units are required to create when engaged in certain operations, including peacekeeping. In relation to Operation Deliverance, the only mandated war diaries were for the Joint Force HQ and for CARBG.¹⁰³ However, other units also maintained diaries. While war diaries have stringent requirements for the preservation of written information, “[i]t is particularly important that *Operations Logs...be included*”.¹⁰⁴

A properly maintained log would “provide the minute-to-minute sequential information as it occurred within Operation Deliverance deployment to Somalia”.¹⁰⁵ Of special interest to us were the logs from three commando units (1 Commando, 2 Commando, and 3 Commando) as well as the Service Commando logs.

Logs were critical to our understanding of events in Somalia, yet the logs we received in June 1995 were incomplete.¹⁰⁶ SILT did not follow up with inquiries about the missing information or monitor the obvious gaps in the information that was returned to us.¹⁰⁷ Even more problematic was the lack of documentation from SILT outlining which logs did exist, which were missing, and why they were missing.¹⁰⁸ After beginning work on the logs in the fall of 1995 and struggling with these problems for months, we wrote to SILT on January 17, 1996 and made it clear that an order would follow requiring production of the logs kept in Somalia unless the Department began to make progress in this regard.¹⁰⁹ SILT replied on February 1, 1996 identifying some of the logs, but the response was far from satisfactory. A further letter from SILT, dated February 9th, had attached as an annex a more comprehensive listing of Somalia-related logs and those that were missing.¹¹⁰ That letter confirmed that 2 Commando communications logs for a period of several months were missing, and nearly all 1 Commando communications logs were missing. It made no mention at all of the logs from 3 Commando or Service Commando. Inquiries with respect to the missing pages appear to have started only on March 11, 1996.¹¹¹ As a matter of fact, the search for logs became frantic only after we informed the military authorities that we would call the CDS, Gen Boyle, as a witness to account for the lack of compliance.

By the beginning of April 1996 we had assembled a list of the operational logs for the in-theatre phase of the operation. This list indicated which of those logs had been delivered to us; practically nothing we received constituted a complete set of documents.¹¹²

In the months of March and April, a number of logs began to appear because of the heightened attention to them. The Airborne Field Squadron’s logs were provided to us on April 18, 1996, after being found among closed files that had not been checked before the April 9th search ordered by Gen Boyle. We found that a copy of the Service Commando logs was held by the military police. In March, SILT informed us that the 1 Commando logs had been destroyed by water while in Somalia.¹¹³ Maj Pommet was surprised that

both copies of the 1 Commando log could have disappeared and noted that they would have been useful to the Inquiry, as they contained a critical evaluation of the shortcomings and unsatisfactory procedures of the operation.¹¹⁴

Following the CDS-ordered search in April, the 2 Commando logs were discovered at CFB Petawawa.¹¹⁵ Despite the importance of the operational logs to our work, the Department appeared to have made little effort to ensure their delivery and completeness. What was produced voluntarily was scant and unacceptable, with no attempt to account for the very substantial portions that were missing. It was not until we had made several demands and finally resorted to the possibility of an order that a more comprehensive search was made. Even the results of those searches were not entirely satisfactory, and many portions remain outstanding.

Incredibly, despite its own mandate to maintain war diaries and certain logs, the Department failed to understand the importance of these documents and failed to explain the unacceptable state of its records. For example, Gen Boyle testified that one reason for missing log pages was that they could have been considered less important once the war diary had been produced.¹¹⁶ The reality, however, was that there was no evidence that such logs were used in the creation of war diaries and that the diary entries did not refer to the logs or attach them as annexes.

An even more startling example concerned the Canadian Intelligence Staff Branch (J2) intelligence logs. These logs recorded significant information received and action taken by Canadian Joint Force Somalia (CJFS) headquarters. They were concerned with information about activities that could affect the CJFS.¹¹⁷ A properly completed J2 log could have provided us with critical objective information concerning such things as the reality of, or lack of, Somali groups engaging in hostile activity on February 17, 1993 or in sabotage activities on March 4, 1993. Therefore, this log could have either confirmed or refuted the sabotage theory surrounding the events leading up to the March 4th incident (see Chapter 38).

There were apparently three copies of these logs,¹¹⁸ but only one copy can be accounted for. These logs were stored in a filing cabinet escorted back to Canada under armed guard¹¹⁹ and sent to CFB Kingston. Twelve filing cabinets of Somalia-related documents, including the J2 logs, were shredded by First Canadian Division Intelligence Company in January or February 1996 because of the desire for storage space.¹²⁰ Maj Messier, who authorized the shredding, considered the material to be of no value to us,¹²¹ as it was “non-essential documentation”.¹²²

This position is untenable, because

- (a) it was our role to decide what information was of importance to us, not the Department's;

- (b) the importance of intelligence information that addresses political and military factions, clan groups, and factional groupings,¹²³ was obvious because of its relevance to the atmosphere surrounding the major incidents under investigation;
- (c) any doubt about such relevance should have been removed by our request number 130 to SILT, dated November 20, 1995, which requested the disclosure of military intelligence reports; and
- (d) we had issued an order to produce all Somalia-related documents.

A telling comment came from WO Beldam, who personally inspected every page of the Somalia-related documents before their destruction in mid-February 1996.¹²⁴ The Sumary Investigation officer asked him whether he had any reservations concerning the destruction of the Somalia-related files. WO Beldam responded:

none [of the documents] had and have no bearing on the matter at hand. We carefully thought the requirement through and decided we were not destroying anything of value. I had a job to do and the filing cabinets were an impediment, we had the disc copies of the material we required. Had I to do it again, I'd shred them again.¹²⁵

This response not only shows that, in WO Beldman's mind, this act of destruction — and a clear violation of our order — was not a mistake, but also shows that it was “carefully thought” out and would be repeated today.

General Boyle Orders the Department to Search Again

By April 1996, LGen Boyle had been promoted to Chief of the Defence Staff. Because of numerous questions arising from our investigations into missing documents, including the Somalia-related logs, Gen Boyle issued a CANFORGEN (a message to all units of the Canadian Forces) on April 3, 1996, ordering the Department and the Canadian Forces to “stand down all but essential operations on Tuesday 9 Apr, to conduct a thorough search of all their files, to identify and forward to NDHQ/SILT any Somalia related document not previously forwarded...not later than [11:59 p.m.] of that day”.¹²⁶

SILT's records indicated that the search resulted in 39,000 additional documents being forwarded.¹²⁷ A major concern was that those 39,000 documents would contain a large amount of duplication of materials already in our possession. Anticipating that this could be problematic, the Commission Secretary wrote to SILT on April 11, 1996, requesting that “[o]nly documents which had not previously been provided to us be delivered”.¹²⁸

By the end of April 1996, SILT had established a data base containing entries for the documents received. This meant that a listing of the documents could be given to us on a computer disk. In addition to information used to identify each document, SILT had classified the documents according to "priority" to indicate the likelihood that a document contained new information. Approximately 28,000 documents fell into the low end of that classification. Although SILT did not know whether these documents were duplicates of earlier documents given to us, the team classified these documents as unlikely to contain new information. We could not rely on this classification, however, because it was clear that the Inquiry and SILT had very different views about what was important in terms of documents.

The point that only non-duplicates were to be provided was emphasized in numerous meetings in April and May. This daunting task was undoubtedly made more difficult by the absence at SILT of a single system of tracking documents and by the apparent incompleteness of what systems did exist. It was acknowledged that our tracking system was more comprehensive and, to facilitate SILT's culling of duplicates, we offered to aid SILT by using computers to identify the most likely candidates for duplication. After additional meetings, the result was a plan of action, the exchange of computer data, and a time frame that was acceptable to both the Inquiry and SILT. In a letter dated May 28, 1996, SILT indicated that a copy of all non-duplicates would be delivered by June 21, 1996.¹²⁹

Unfortunately, in a subsequent meeting on June 12th, SILT stated that approximately 28,000 of the 39,000 documents would not be reviewed for duplicates, because SILT considered that those documents were unlikely to contain new information and that to do so would take far longer than the time afforded by the June 21st delivery date. Although SILT had committed on more than one occasion to go through the exercise of eliminating duplicates, the size of that undertaking appeared to overwhelm the organization.

At this point the vast majority of the documents from the search remained at SILT, where they had been since April. Nearly two months had elapsed with very little progress in getting the documents to us for review. We had no choice but to deal with the problem of duplicates ourselves.

In a letter dated June 13, 1996, we demanded delivery of all of the documents from the April 9th search by the beginning of the following week.¹³⁰ Despite the earlier commitment to deliver the documents by June 21st, and numerous telephone conversations and letters prompting SILT for timely delivery, it was not until September 27, 1996 — more than five months after the search was conducted and the documents had been received by SILT — that we finally received all the documents.

Starting in June, when we began to receive documents, Inquiry staff catalogued and reviewed them over a period of four months. Following this initial stage, staff spent many hundreds of hours more eliminating duplicates and updating hearing books affected by the additional documents.

Delays in SILT's Review of Hearing Books

We agreed to a protocol whereby documents to be included in hearing books would be sent to SILT for final review. After each hearing book was compiled and Commission counsel had approved its contents, SILT reviewed the documents before the hearing books were sent to the printer. The purpose was to identify any missing information and to allow SILT to request *in camera* hearings for documents that could affect matters of national security or to request the severance of information of a sensitive nature not necessary for our work.

Initially SILT's review of the hearing books was done on a timely basis and with few difficulties. As hearing books increased in volume, sometimes accompanied by requests to supply missing documents, SILT took longer and longer to review them. Delays of two, three, or four months were not uncommon, and in some instances, it took SILT nearly six or seven months to return a series of hearing books, as in the case of those relating to Cpl Matchee's alleged suicide attempt.¹³¹

When these delays became apparent, we took a proactive approach and attempted to manage the situation. We determined which books had the greatest priority and then asked SILT to work on those books first. To have a workable arrangement, in many instances we also asked SILT itself to determine when overdue books would be ready. The results of this approach were also unsatisfactory: some of our requests were ignored,¹³² other requests for the return of hearing books were met with promises of delivery within an unspecified time frame. When delivery dates were specified, SILT often did not keep those commitments.¹³³ The result was that the filing of hearing books prepared months in advance became unduly delayed.

Documents Arriving as Late as 1997

On January 10, 1997 the Government announced that we were to end our hearings by the end of March 1997 and to complete the final report by June 30, 1997.

At the time of the announcement, we had made 391 numbered requests to SILT, of which 59 remained outstanding. For these 59 requests — some dating as far back as September and October 1995, when the original request

system was implemented — we had either received no documents or had received incomplete deliveries and awaited additional information. They collectively addressed a wide variety of issues, from maps of Belet Huen to communications logs to minutes of high-level meetings within the Department. Of the 391 requests at that time, 342 of them were no longer “outstanding” in the sense that they were no longer active. However, in a number of cases, including the *National Defence Act Review* and the NDOC standing orders discussed earlier, we had never received the information we sought. To our consternation, it was SILT that considered the requests closed because it was unable to find the requested information after some effort.

As we altered our plans and time lines to accommodate the Government’s surprising announcement, documents stemming from SILT requests and the original order for production continued to arrive, sometimes in quantity.

One example was the war diaries. Hearing books dealing with the war diaries had been compiled early in 1996 and were sent to SILT for review in April. These hearing books were returned by SILT in July and filed when hearings recommenced in September 1996.¹³⁴ Additional war diary documents on computer disk arrived in January 1997, with the explanation from SILT that although the disks were received in early April 1996, “a cursory examination” at that time led the researcher to believe that the materials were duplicates.¹³⁵ Another eight or nine months had passed before SILT re-examined the disks, found additional new documents, and forwarded the disks to us in 1997.

A more important example was documents for which the Government was claiming privilege. Pursuant to paragraph (i) of the Inquiry’s order for production, the Department was required to produce “A list of all documents for which privilege is claimed, a description of the privileged information, and the basis on which privilege for claimed”.¹³⁶

By the fall of 1995 we had received a list containing a small number of documents for which solicitor/client privilege was claimed. In March 1996, during a visit to the Office of Counsel for the Government of Canada (OCGC), we were given an updated list specifying 134 documents for which privilege was claimed. We were given access to these documents and, after reviewing them, disputed the Government’s overly broad claim of privilege for many of those documents.¹³⁷

On September 27, 1996, more than a year after the list was due pursuant to the order for production, we received a new list of 2,617 documents for which privilege was claimed, documents referred to by SILT and the OCGC as the “LD” or legal documents. Starting in October, Commission counsel went to the OCGC offices to review those 2,617 documents. As part of ongoing discussions, the OCGC indicated that the list of 2,617 documents was

a working document, and accordingly the OCGC would review the list to eliminate duplicates and non-privileged documents.¹³⁸ In November 1996, as the painstaking effort to go through the 2,617 documents was under way, we were informed that additional documents were being added to the LD list.¹³⁹ The number of documents to be reviewed had grown to 8,000 by November¹⁴⁰ and then to 12,000 by December 1996.¹⁴¹

Apart from the frustration of huge increases in the number of documents to be reviewed, duplicates of documents already received or reviewed were regularly found among the legal documents, despite the earlier commitment by the OCGC to remove duplicates. In addition, the OCGC appeared to be taking the extraordinary position that privilege was claimed for documents on the LD list based on their being in the possession of counsel:

To clarify matters it is our position that these particular documents are privileged and this privilege is claimed on each document as follows:

- a. The documents [were] contained in the file created by or for a solicitor or counsel;
- b. The documents were provided in confidence to solicitor or counsel for the purpose of securing legal advice;
- c. The documents were gathered by counsel for his or her assistance in preparing for legal proceedings conducted for or against the Crown;
- d. The documents were assembled or gathered by counsel in preparation of an opinion or preparation of a case for or against the Crown and therefore the privilege exists as that of a solicitor brief or litigation brief.¹⁴²

Commission counsel stated their disagreement with this assertion of privilege and, in the interests of expediency, asked that the alleged privilege be waived in documents of interest to us.¹⁴³ Subsequent to those communications, arrangements were made to have urgent documents delivered by mid-December and the rest delivered by December 20, 1996. Neither target date was met. Instead, the bulk of the documents arrived a month later, after the Government's announcement had drastically reduced the time available to review these documents.

The Department's Inadequate Production and its Effect on our Work

An enormous amount of material was received over the life of the Inquiry. More than 150,000 documents containing 650,000 pages were catalogued into a data base and reviewed by our staff.¹⁴⁴ That we had over 150,000 documents also meant that SILT had delivered over 150,000 documents. Many

of these, particularly those that had been scanned into electronic format by SILT, proved invaluable to our work. Approximately 400 hearing books were produced, which meant that the same number of books were reviewed by SILT staff members. In many ways, our tremendous efforts to retain control over the flood of documents that continued until the end of our hearings were mirrored by the efforts of the members of SILT.

Our serious concerns about the motivation and structure of SILT make it difficult to recognize the efforts that many individuals made within this system. Despite the difficulties, personal contacts between ourselves and SILT personnel were for the most part business-like and courteous. Even in a flawed system, one cannot work for several years without establishing friendly relations and coming to have a high regard for the personal capabilities of many of the people one is associating with almost daily at times.

Generally speaking, individuals at SILT returned calls promptly and appeared to do what they could to address specific problems. There are instances where individuals made helpful suggestions and provided more than was asked of them. Col Leclerc certainly worked long and hard at the task that was given to him, and we were also impressed by a new spirit of co-operation and professionalism that became evident at SILT in the later stages under the leadership of MGen Tousignant.

But the purpose and design of SILT placed everyone within it in an impossible position, caught between adherence to our order of production and respect for the public inquiry process, and loyalty to their own institution and leadership — a leadership by its own admission disinclined to recognize the public's right to information and willing to resort to legalistic hair-splitting and subterfuge to avoid divulging that information.

Despite these efforts by individuals at SILT, our work was hampered by many systemic difficulties, principally the late delivery of documents; the delivery of documents in an incomplete and disorganized form; and a failure to manage the production of documents.

Late Delivery

The late delivery of documents is a recurring theme throughout the history of this Inquiry. Our original order required production by May 1995. At the Department's request, the time period was extended until June. Documents continued to arrive, however, throughout the rest of 1995. MGen Boyle's search in April 1996 produced many more documents that should have been included in the initial production. The delivery of this second set was not complete until September 1996, nearly a year after evidentiary hearings had started and nearly a year and a half after the original order for production. Even then, documents on the LD list were not delivered until early 1997.

Of necessity, we depended on the promptness of the Department to meet our own time lines. The delay in production of documents inevitably meant delay in our work and the progress of the hearings. The most notable example was the delay of the in-theatre portion of hearings until September 1996 because of the Department's failure to produce all the required documents, the consequent need to conduct document-related hearings, and the arrival of new documents following the April 9, 1996 search. The research of many individual issues was also delayed by our unanswered requests to SILT and the poor state of the delivered documents.

Disorganized and Piecemeal Delivery

Given the quantity of documents being delivered, their breadth of scope, and the variety of sources from which they originated, it was crucial that SILT deliver them in an organized manner. Instead, these documents arrived in disarray, often without a covering letter identifying the contents of the delivery or an explanation of their significance or context. Indexes were included in later deliveries, but these were unreliable because they contained many errors and often did not correspond with the documents delivered.

As a result of these deficiencies, we spent thousands of hours reviewing the documents, eliminating duplicates, organizing them into meaningful categories in order to conduct research and assemble document hearing books, and attempting to reconstruct documents that arrived piecemeal, for example the DEM-related documents and the Red Book materials.

A similar situation arose in documents relating to the March 4, 1993 shooting of two Somali nationals. The military police report of that incident was a key document and one of the natural starting points for investigation.¹⁴⁵ That report was delivered in pieces, however, and had to be reconstructed over several days. Because we encountered this type of difficulty many times, Inquiry staff and counsel had to take extra time to work on documents before they could work with them.

The second wave of documents from the April 9, 1996 search only added to these difficulties. Despite Gen Boyle's instructions that only documents not previously provided should be forwarded,¹⁴⁶ many duplicates were sent and had to be eliminated. Because these documents were received so late, entire series of hearing books had to be updated or supplemented.

Also, since document disclosure continued throughout all phases of the hearings, much of the information was received after we had dealt with the relevant issue. By the time the April 9, 1996 documents arrived, we had already completed months of hearings on the pre-deployment phase of Operation Deliverance. Inquiry staff had also produced many working papers based on testimony from those hearings and on the documents already in our possession.

The arrival of tens of thousands of additional documents meant that many of the working papers had to be revised to incorporate the new information and that documents of potential assistance to Commission counsel came too late.

SILT Was Event-Driven, Not Management-Driven

The quantity of incomplete documents, the absence of a system for ensuring complete delivery, and SILT's inability to account for long delays in fulfilling some requests illustrate its reactive approach to the issue of document production.

Col Leclerc's testimony described the initiative and organization that existed very early in SILT's work. That early plan quickly became inadequate, however, in the face of the enormous volume of documents arriving at SILT.

Although SILT was charged with the challenging task of collecting documents from the entire Department and the Canadian Forces, it did not establish a method of ensuring their receipt.¹⁴⁷ Even when it became obvious that documents were missing and that SILT's methodology was flawed, there was no attempt to correct the situation. The alteration and attempted destruction of documents at the DGPA demonstrates this point. SILT also did not bother to inform us of these serious difficulties, despite almost daily contact with Inquiry staff. There was no apparent effort to organize the documents that were delivered, and when important documents such as operational logs were obviously deficient, SILT was content to pass them on without ensuring their completeness.

Finally, as discussed earlier, in a number of SILT requests, SILT prematurely declared documents to be unavailable even though it had not exhausted all possible avenues of search. For example, in the case of request 307, SILT recognized that copies of the Combined Joint Force Somalia operations plan could be held by the U.S. Department of Defense, but instead of pursuing that obvious route, SILT considered the matter closed. In another example, SILT's search for the Kipling Reports consisted simply of a series of telephone conversations with a single office before it was satisfied that such documents were no longer available. In these and many other examples, it was only because of additional prodding on our part that SILT took further action.

SILT failed to manage actively the production of documents and played only a passive role as a conduit for the materials it received. The Department seems to have made inadequate provision for the supervision of matters related to our Inquiry.

In many instances throughout the process of document production, it was only when we highlighted a problem that the Department addressed it. The fact that DND would wait until a problem had assumed crisis proportions before responding is amply illustrated by the second sweep for documents

in April 1996. After several months of investigation into incomplete logs and other document-related issues, Gen Boyle was so troubled by his Department's problems in responding that he ordered the entire Department and the Canadian Forces to stand down and search for documents for a day. Despite such extraordinary efforts, the Department is still unable to account for many documents.

THE DGPA PHASE

Non-Compliance with the Inquiry's Order and Attempted Destruction of Documents

Under paragraph 2 of our terms of reference, we were authorized to adopt such procedures and methods as were considered expedient for the proper conduct of the Inquiry. In light of the allegations of cover-up, we believed that the most, if not the only, expedient and reasonable way of securing the material we needed was by issuing a request to the Minister of National Defence for production of Somalia-related documents.

On April 21, 1995 we issued an order requesting the transfer of all Somalia-related documents to us within 30 days.¹⁴⁸ On May 29, 1995 we gave the Department additional time to comply, extending the delivery date to June 30, 1995, in response to a request from the Attorney General of Canada.

However, by September 5, 1995, the Directorate General of Public Affairs had still not complied with the order, even as extended. The testimony of Ms. Ruth Cardinal, then Director General of DGPA, reveals that some time in April she was informed verbally of the existence of the order, but she never received a copy of it or any written instructions as to what measures she should take to ensure proper compliance within the time frame stipulated. Although she does not recall having seen the CANFORGEN issued on June 16, 1995, she testified that she must have received it.¹⁴⁹

As described previously, SILT was established in April 1995. The team, led by Col Leclerc, initially reported to LGen Boyle, and its mandate included the collection and cataloguing of all Somalia-related material and a duty to assist the Inquiry in obtaining relevant information from the Department of National Defence. All DND employees and CF members were required to comply with requests made by SILT, and no DND or CF documents, in whatever form they existed, were to be withheld from SILT.¹⁵⁰ Eventually, in June 1995, LGen (ret) Fox came to occupy a newly created position, Special Adviser.¹⁵¹

According to Ms. Cardinal's testimony, she received no instructions from LGen Boyle, Dr. Calder or SILT as to what documents she should be collecting and what form or method she was to adopt to comply with our order.¹⁵² She in turn issued no written instructions, orders or directives to her personnel to ensure compliance with the order.¹⁵³ Only in September 1995 — that is to say, some four and a half months after the service of the order and three and a half months after its original expiry date — did the DGPA staff most knowledgeable about the existence and handling of Somalia-related documents (Mrs. Nancy Fournier, Lt (N) Brayman and Mrs. Claudette Lemay) become aware of the existence of the Commissioners' order and the need to collect relevant documentation.¹⁵⁴

Notwithstanding that Ms. Cardinal was asked by LGen Boyle to make another sweep to ensure that all documents had been transferred to SILT in compliance with the order and that Lt (N) Wong had told her that there was "something going on" with the documents and SILT had not received them,¹⁵⁵ she took no follow-up action.¹⁵⁶

In addition to these stunning developments, the evidence reveals that, on September 5, 1995, Ms. Nancy Fournier was placing Somalia-related documents, including Responses to Queries (RTQs), into a burn bag for destruction when she was interrupted by Lt (N) Wong, who ordered her to cease her activities immediately and to secure the material. Ms. Fournier testified that she had been instructed by Col Haswell to get rid of Somalia-related documents.¹⁵⁷

There were in existence, at that time, two sets of Somalia-related RTQs in binders, one set containing the originals of these RTQs, the other the altered copies given to the CBC reporter, Michael McAuliffe. The originals contained the original sign-offs and indicated who, in senior management, authorized their release. This information was unavailable anywhere else.¹⁵⁸ Lt (N) Brayman, who became aware of the destruction in progress and went to discuss it with Col Haswell, testified that he was told by Col Haswell that two sets of RTQs could not be permitted to coexist, because if the originals were transferred to the Commissioners and publicly released by them, the CBC reporter would then realize that he had been given altered documents.¹⁵⁹ This concern was first voiced by Mrs. Fournier, who passed it on to Col Haswell.¹⁶⁰

We are satisfied that there was a deliberate and blatant attempt within the DGPA to avoid compliance with our orders and the CANFORGEN and that there was also an attempt to cover up the fact that on two prior occasions — one of which was pursuant to a formal request under the Access to Information Act — altered documents had been given to a media reporter.

The events subsequent to September 5, 1995 are telling in this regard and confirm the prevailing mentality at the DGPA. Lt (N) Wong testified that on September 6th, he informed the Director General of Public Affairs,

in general terms, of the problems associated with the transfer of documents to the Inquiry. She acknowledged as much in her testimony.¹⁶¹ Lt (N) Wong testified that on September 15, 1995, he suggested to the Director General that she talk to her captains and that an investigation be conducted.

Lt (N) Brayman indicated that as of September 14th, he felt that the chain of command had still not been properly informed of the problems of alteration and destruction of Somalia-related documents. He met with LCol Carter, a lawyer of the JAG office working at SILT who appeared before us, to alert her to the problem. On September 21, 1995, he met with the Director General and other officials of the DGPA at a staff meeting and was surprised and concerned by the fact that the Director General did not seem to have a complete knowledge and understanding of the nature and scope of the problem. He and Nancy Fournier went to meet with Ms. Cardinal after the meeting in an attempt to acquaint her more thoroughly with the facts.

Only on September 22nd, that is, 17 days after the problems of alteration, destruction, and non-compliance with the orders were brought to light, was an investigation finally ordered,¹⁶² a remarkable state of affairs in an organization that prides itself on its efficiency. What is even more remarkable, in view of the serious, possibly criminal, nature of these alleged shortcomings (improper alteration of documents under the Access to Information Act, failure to comply with orders, allegations of an illegal military order to destroy documents under legal request, interference with a legal process, allegations of cover-up), is that only an internal investigation was ordered — an internal administrative review by the Chief Review Services (CRS). In fact, the limited CRS review was to address only the alteration of documents. This device was chosen rather than a military police investigation of all the alleged violations.¹⁶³ At a staff meeting of September 26, 1995, the whole matter was presented, in general terms, as one involving an administrative problem with a file.¹⁶⁴

To summarize: the chain of command at DGPA failed to react diligently to the serious problems identified on September 5, 1995 and to take the appropriate and necessary measures to inform the Inquiry immediately of the problems previously described, the existence of Somalia-related documents, and its failure to comply with the Inquiry's order and the CANFORGEN order. Only on October 3, 1995, after being confronted with our knowledge of the facts, did SILT admit to the events. This situation notwithstanding, only on November 8, 1995 were we given some samples of altered and unaltered RTQs. (Despite our regular contact with SILT representatives, these samples were mailed to us by 4th class mail by LCol Carter on October 27th.) Further evidence of undue delay is manifest in the fact that it was not until after Mr. McAuliffe broke another story, on October 27th, that was critical

of LGen Boyle for having provided misleading information that LCol Carter saw fit to deliver a copy of the CRS report to us. That same afternoon, we received three boxes of documents with no accompanying explanatory letter. Eventually, the military police gave us a copy of the report of its investigation but we received no letter or communication from SILT. The Somalia-related documents in the possession of the DGPA, which we had requested on April 21, 1995, were finally handed over to us on November 8, 1995.

Sadly enough, the DGPA chain of command is not the only one that failed to assume leadership and its obligations under the Inquiry's order.

The evidence reveals that on September 5th and 6th, Col Leclerc and LGen (ret) Fox of SILT were informed by Lt (N) Wong of the allegations with respect to the alteration and destruction of documents and of the failure to comply with our request for documents. The briefing to LGen (ret) Fox was given in the presence of Col Leclerc,¹⁶⁵ who himself had already received a full briefing by Lt (N) Wong.¹⁶⁶ LGen (ret) Fox served 39 years in the Canadian Forces¹⁶⁷ and moved through all levels of command in the army and a number of senior staff appointments.¹⁶⁸ He is a very experienced officer and has been described as very capable and very bright.¹⁶⁹ He claimed in his testimony that he was informed simply of the alleged destruction of documents and that he did not inquire about what had happened and why it was happening. He asserted, to our astonishment, that he did not regard the attempted destruction as a big problem.¹⁷⁰ We cannot give credit to his explanations, especially in view of the fact that he told us that from that time forward he and Col Leclerc had to intensify their supervision of DGPA relations and that one of their subordinates, Lt (N) Wong, was therefore to monitor the situation closely in the DGPA.¹⁷¹ LGen (ret) Fox also admitted in examination that the destruction of officially sought documents was an unusual and extraordinary occurrence.¹⁷²

We are also unable to credit his testimony to the effect that as of September 14, 1995, he did not know of the alterations of the documents that were the subject of the destruction order.¹⁷³ Indeed, LCol Carter testified that she informed him of her meeting with Lt (N) Brayman and that she told him of the alteration of documents, the inaccurate memoranda signed by LGen Boyle, and the attempt to destroy the documents.¹⁷⁴

LGen (ret) Fox told us that he recalled that, at the end of his meeting with LCol Carter, "something" was to be told to LGen Boyle, but he did not recall in detail what that "something" was. Nevertheless, he recalled that it was the DGPA's responsibility to inform LGen Boyle of that "something".¹⁷⁵ This explanation strained credibility. LGen Boyle was the immediate superior of LGen (ret) Fox and, to the knowledge of everyone, especially LGen (ret) Fox,

he exerted strict control over Somalia-related issues. It is unthinkable that LGen (ret) Fox would not have given a warning to his superior, LGen Boyle, even if only to alert him that “something fishy” was going on, involving both LGen Boyle and the DGPA. As we pointed out to the witness, if we were to believe him, the responsibility to inform LGen Boyle would have rested with the very people at the centre of the controversy in the DGPA.¹⁷⁶

The testimony of LGen Reay with respect to a sensitive letter sent by MGen Vernon on May 23, 1995, regarding co-operation with our Inquiry, showed that news usually spread very rapidly within the chain of command¹⁷⁷ and that LGen Boyle, even if he was not in the chain of command, was rapidly informed of any Somalia-related issue, since he acted as a clearing house on these matters.¹⁷⁸ Indeed, when LGen Reay met with LGen Boyle to discuss MGen Vernon’s letter, he found that LGen Boyle was already aware of it.¹⁷⁹ The witness admitted that this kind of news spread like wild fire.¹⁸⁰ We have good reason to believe that the same swift passage of information would have occurred with respect to events that involved alterations to and attempted destruction of Somalia-related documents, especially since serious concerns about inaccurate or false memoranda signed by LGen Boyle himself were involved.

LGen (ret) Fox testified that he did not get a proper briefing from LCol Carter on September 14, 1995 about the issues raised with her by Lt (N) Brayman.¹⁸¹ In this regard, LCol Carter, whose own testimony at times was coloured by evasiveness and *ex post facto* rationalizations,¹⁸² asserted that she reported the three significant incidents (destruction and alteration of documents and false memoranda signed by LGen Boyle) but did not provide LGen (ret) Fox with many details since she was unaware of them.¹⁸³ In reality, this was a good reason for her to make further inquiries, so as to be in a position to provide her superior with the necessary details. Surprisingly, LCol Carter stated that she thought that other people were better able than she was to acquire and pass on this information.¹⁸⁴

We find it hard to believe that, on September 14, 1995, LGen (ret) Fox was not aware of the attempted destruction and the alteration of documents. He had been briefed on these matters on September 6th by Lt (N) Wong in the presence of Col Leclerc.¹⁸⁵ Col Leclerc, as the official responsible for SILT’s collection of documents for the Inquiry, discussed developments on a daily basis with his superior, LGen (ret) Fox. Between September 6 and September 14, 1995, Col Leclerc, who had been fully briefed, must have provided more information to LGen (ret) Fox. We also find it difficult to credit LGen (ret) Fox’s assertion that he sought no explanation about the attempted destruction from either Lt (N) Wong or LCol Carter, who both reported to him, when each, in some manner, informed him of this serious incident.¹⁸⁶

In any event, we base this credibility finding in large measure on our belief that, as a bright, experienced, and able officer, he had enough information to appreciate well what was transpiring and the seriousness of the situation.

LGen (ret) Fox testified that he did not connect the CRS investigation on DGPA documents with the DGPA documents about which Lt (N) Wong and LCol Carter informed him.¹⁸⁷ At best, this is wilful blindness. In addition, he offered, without justification, the incredible explanation that he thought that the attempt to destroy the documents was simply inadvertent, a mistake, and an ill-founded action by a person who had misunderstood the Commissioners' order for the production of documents.¹⁸⁸

LGen (ret) Fox asserted that he did not connect the attempt to destroy documents with an attempt to circumvent or not to comply with the Commissioners' order or an attempt to erase evidence of alterations made to these documents.¹⁸⁹ We found his testimony in this regard to be selective and evasive. LGen Fox left the distinct impression that he was trying to protect Gen Boyle, the individual to whom he reported on a daily basis.¹⁹⁰ His loyalty to his superior, who eventually became the CDS, in our view clouded his vision as a witness before us.

The SILT chain of command failed to react diligently to the serious problems identified on September 5, 1995. No letters were sent to Col Haswell or his group, or to the Director General of the DGPA, and no steps were taken or procedure put in place immediately to collect or retrieve the documents that were the subject of the destruction attempt.¹⁹¹ In addition, SILT failed to take the appropriate and necessary measures to inform us of such problems, the existence of Somalia-related documents, and the failure to comply with our order. It was SILT's duty to maintain liaison with the Inquiry and to facilitate the obtaining and disclosure of relevant documents to us.

Notwithstanding our almost daily contact with SILT, we were never informed of the problems at the DGPA and the lack of compliance by the DGPA with our order.

In fact, LCol Carter, a lawyer in the JAG's office, an officer of justice, and a member of the SILT team assigned to assist us in our work, was informed as early as September 14, 1995 of the alleged violations, including the violation of our legal order. When informed on September 14th, she gave Lt (N) Brayman a week to sort out and remedy the matter within his own chain of command, at the end of which she would inform her own chains of command. (As a lawyer, she had a chain of command within the JAG's office, and as a military officer and a member of SILT, she had a chain of command within and through SILT.) The fact remains, however, that she was an officer of justice assigned to work with us and appearing before us. We would have appreciated receiving complete and timely advice. Eventually, she was

informed that it was necessary that she be called as a witness in these matters and, consequently, she was invited to withdraw from the proceedings on account of her potential conflict of interest. She declined to do so, and she had to be disqualified and removed by order of the Commission from the record of our proceedings on May 14, 1996.¹⁹²

In the course of his testimony, LGen (ret) Fox tried to explain SILT's failure to obtain the DGPA documents by the fact that they had established some priority in obtaining the documents. The explanation would appear to be that they concentrated their efforts on the pre-deployment phase and, in this context, the DGPA documents were seen as post-deployment documents.¹⁹³ However, our order requested that all documents be transferred and did not authorize SILT to assign priorities to the material. In addition, the DGPA had in its possession material that also related to the pre-deployment phase and yet it was not transferred to the Inquiry in this so-called prioritization process.

Alteration of Documents

To help the reader gain a full appreciation of the complexity of the events relative to the DGPA phase of our proceedings, we are providing, as an annex to this chapter, a chronology of the events as they unfolded (see Annex A).

In September 1993, Mr. McAuliffe, a CBC reporter, made a telephone request for copies of existing RTQs relating to Somalia. It was the first time such documents had been requested by the media. During a tour of the DGPA premises, Mr. McAuliffe became aware of the existence of RTQs. His request created turmoil within the DGPA and eventually resulted in a decision to transmit to him, unofficially and informally, a number of altered RTQs.

The oral and documentary evidence heard and filed at our hearings clearly reveals a concerted and deliberate decision by the Director General of Public Affairs and his subordinates to alter the format of RTQs requested by Mr. McAuliffe.¹⁹⁴ This approach was consistent with the policy of containment reputedly favoured by MGen Boyle and the Deputy Minister.¹⁹⁵ We are satisfied, on the basis of the evidence we heard, that both Dr. Calder and MGen Boyle were aware of the decision to release altered documents informally and gave their concurrence to such process.¹⁹⁶ In testimony before us, Mr. Gonzalez stated, "I left that meeting with the clear understanding that I had their concurrence in principle".¹⁹⁷ Indeed, at the time, no Somalia-related document could be released to the media without the prior approval of MGen Boyle, who was heading the Somalia Working Group under the direct supervision of the CDS and the Deputy Minister. In this context, Mr. Gonzalez, who had just been recruited for this position

by Dr. Calder, could not and would not have decided independently to release such sensitive documents. There is no reason to believe that he would not have mentioned to his superiors, Dr. Calder and MGen Boyle, the consensus that existed among his senior staff to release informally only portions of the requested RTQs to Mr. McAuliffe.¹⁹⁸

MGen Boyle was described to us as a meticulous man, a micro manager, a man who was a stickler for details.¹⁹⁹ It is unthinkable that a new Director General would have wished or been able to run altered documents by him without his knowledge, especially since these documents were to be the subject of release to the media.

Furthermore, it was common knowledge in the media liaison office that Mr. McAuliffe was to receive altered documents.²⁰⁰ The alterations were to involve the deletion of information identifying the originator and those who had approved the RTQs, and the removal of sections of the documents reserved for comments and sensitive background information. Also, the documents were to be reformatted so as to appear full and complete.²⁰¹ There was also evidence before us that, at times, the substance of the remaining information on the RTQs to be given out was altered.²⁰² It is not necessary for our purposes to determine whether the alterations made the altered RTQs more accurate, as some have contended.²⁰³ The fact is that the request was for the existing RTQs, not for RTQs that were surreptitiously modified to suit the Department's desire to minimize any potential negative impact.

On January 20, 1994, Mr. McAuliffe made an official request under the Access to Information Act for "all documents known as Response to Queries prepared by or for the Media Liaison Office or Director General of Public Affairs branch at [NDHQ] between the dates of May 15, 1993 and January 16, 1994".²⁰⁴ This official Access to Information (ATI) request encompassed RTQs that had already been released to him. Fearing that Mr. McAuliffe would realize that the documents he had been given unofficially had been altered, the senior authorities at DGPA decided to carry on with the pattern of deception already adopted and therefore proceeded to alter the RTQs requested under ATI.²⁰⁵ These altered RTQs were sent to Mr. McAuliffe on May 16, 1994, more than three months after they were due under the act.²⁰⁶

In June 1994, when Mr. McAuliffe made a second request for RTQs,²⁰⁷ he was denied access to them. He was informed by the DND Co-ordinator for Access to Information and Privacy (ATIP), who in turn had been so informed on May 11th and June 17th by MGen Boyle, that RTQs were no longer produced. The explanation was that, as of January 1994, RTQs were no longer produced as a result of a change in official policy and the introduction of a 1-800 media information line.²⁰⁸ However, the evidence before us clearly revealed that the memorandum from MGen Boyle was seriously misleading, if not dishonest, since RTQs were still produced in January,

February, and March 1994.²⁰⁹ According to the change in policy, RTQs were to be replaced in January by Media Response Lines (MRLs). However, some 35 RTQs were produced, and MGen Boyle himself signed, reviewed, or initialised some on January 14, 25, 28, and February 9, 1994.²¹⁰

The evidence of senior officials is replete with unconvincing attempts to convince us that RTQs were an undefined concept rather than a document.²¹¹ We were also told that what was given to Mr. McAuliffe, both officially and unofficially, were RTQs.²¹²

The truth is that the RTQs requested by Mr. McAuliffe had a format that was largely defined, and those that were released to him were reformed before release in such a way that the deletions made would not be apparent.²¹³

In this process of deletion, the requirements of the Access to Information Act were not followed. The requester was never informed of the deletions, and consequently no reasons were ever provided to justify such deletions. The result was a clear and successful attempt to deceive the requester.

In addition to the machinations within the Department just described, there was also an unsuccessful attempt to deter Mr. McAuliffe from making an ATI request for documents. The activities of DND at this time cannot be viewed as other than an attempt to frustrate the proper functioning of our access to information laws. For example, the estimate of the cost of searching for and analyzing documents subject to the first formal request established an inordinate number of hours and prohibitively high costs (413 hours and \$4080).²¹⁴

In point of fact, these documents were readily available.²¹⁵ According to a letter signed by Maj Verville and addressed to Lt (N) Brayman, LCdr Considine, and Cdr Caie, the estimate was nonsensical, especially since Lt (N) Brayman had confirmed that he knew how many RTQs had been written and where they were.²¹⁶ Mrs. Fournier found the estimate outrageous. She had collected all the RTQs in two days, and the books containing them were sitting on the shelves.²¹⁷ MGen Boyle and Col Haswell also agreed with Maj Verville that the time and cost estimates made no sense.²¹⁸

A time log was made and reconstructed after the events.²¹⁹ This log reflects the fact that Ms. Fournier was acting as instructed by her superior²²⁰ and, as one would expect, the time log has no entry for the editing of the RTQs.²²¹ There were other efforts to evade detection of the document alteration scheme: Lt (N) Brayman testified initially that he put four hours in the time log for services that he did not perform, as the staff was required to accumulate hours.²²² Upon resumption of our hearings after a weekend break, he produced a new explanation and asserted that these same four hours might have been for services rendered on a different file in which Mr. McAuliffe had initiated a request for Significant Incident Reports.²²³ This new explanation was far from convincing. In any event, even if it were true, it meant

that he knowingly proceeded to charge these hours illegally to the ATI file concerning the RTQs.²²⁴ He also tried to convince us, in the context of his earlier explanation, that he was requested to record these hours on behalf of LCdr Considine for work LCdr Considine had done, but LCdr Considine flatly denied having done so.²²⁵

Finally, the change of name from RTQs to MRLs was, in our view, nothing less than a vulgar scheme to frustrate access to information requests and was so perceived by the personnel within the public affairs branch.²²⁶ MGen Boyle admitted that RTQs and MRLs both served exactly the same function in the workings of the media liaison office.²²⁷ We were told that MRLs were nothing more than transitory documents and, as such, not public, thus permitting their destruction after 72 hours.²²⁸ In our view, however, the destruction of MRLs after 72 hours was an attempt to defeat access to information requests directed to the media liaison office.²²⁹

A memorandum from Col Haswell to MGen Boyle is indicative of the attempt to frustrate the act.²³⁰ In that memorandum, he wrote that Mr. McAuliffe's request had been anticipated and "fortunately" the authorities were in a position to tell the requester that RTQs were no longer produced for the period requested. DND officials did this obviously without telling Mr. McAuliffe that RTQs had simply been replaced by MRLs.

This willingness to deceive, prevalent in the DGPA, is also apparent in a draft memorandum prepared for the signature of MGen Boyle.²³¹ In this memorandum addressed to his superior, Dr. Calder, MGen Boyle suggested that, in these times of increased Access to Information requests, it might be prudent to remove any references from all pertinent documents to the name of a journalist who had been critical of the Department. We were unable to ascertain whether the original was eventually signed by MGen Boyle, but the memorandum reveals a willingness within DGPA to alter existing documents before their public release under the Access to Information Act. MGen Boyle obviously knew of this negative orientation with respect to access to information matters under his control.²³² Indeed, senior officials in the DGPA were obsessed with access to information problems and adhered to a negative and restrictive interpretation of a citizen's right to access. This obsessive and restrictive approach was manifest in a policy of editing draft correspondence by affixing removable yellow notation stickers on documents. These stickers were subsequently removed, thereby precluding an examination of all relevant observations and reactions to the material in question.²³³

It was surprising for us to hear that the new director of DGPA, Ms. Cardinal, considered MRLs to be non-public documents because they required updating after 72 hours and therefore could be destroyed.²³⁴ Yet, in January 1994, three months before her arrival at DGPA, LGen Reay concluded, after having consulted the ATI people, that documents with regard

to an officer's reproof could not be altered, destroyed, or substituted once a request under the *Access to Information Act* had been made. Presumably the same reasoning should apply even to transitory documents, such as MRLs. Under Ms. Cardinal's approach, it was justifiable to destroy government documents, provided one was quick enough to do so before an access request was made. This approach is certainly not in keeping with the spirit of the *Access to Information Act*.

Furthermore, as early as August 20, 1993, prior to Mr. McAuliffe's informal request for RTQs, the VCDS, LGen O'Donnell, wrote to a number of senior officials, including the ADM (Policy and Communications) and MGen Boyle, expressing concerns over the fact that some replies provided by various offices and Group Principals in response to Access to Information requests for Somalia records were incomplete and, in some instances, erroneous. He stressed the importance of the matter and the serious consequences that such failings could have for the integrity of the Department. In his communication he spoke of the necessity for DND to act not only in accordance with the letter, but also with the spirit of the legislation.²³⁵ In a memorandum sent three days later by MGen Boyle to Dr. Calder, his superior, MGen Boyle addressed the concerns of the VCDS by asserting that he controlled every information request that went through the office and that he would sign off (i.e., assume responsibility) on Dr. Calder's behalf. He went on to add that the same process would be followed for all ATI requests.²³⁶ Therefore, MGen Boyle was aware of the continuing problems before Mr. McAuliffe's request and pledged himself to exert strict control and ensure compliance with the act.

However, in his testimony before us, Gen Boyle defined his role narrowly as one of ensuring compliance with the letter of the act.²³⁷ Also, he acknowledged his failure to ensure compliance with the spirit of the law.²³⁸

The result was to discredit a new system purportedly designed to bring greater transparency to the Department's relations with the media and the public.²³⁹ To the contrary, the actual effect was a gradual erosion of transparency and accountability. Second, the failure by this important government department to obey the spirit of laws enacted by Parliament had the potential to undermine public confidence in the state of civil-military relations. Third, these events served to undermine discipline within the Canadian Forces. Apparently, to judge by these events, disobedience to the spirit of laws (indeed, even the spirit of any lawful order issued through the chain of command) and the shirking of an officer's responsibilities would be condoned.

The letter of the VCDS certainly amounted to a serious warning and a reprimand to the entire Department of National Defence. Strikingly, according to the evidence before us, the remarks of the VCDS were subsequently ignored by those who received them.²⁴⁰ The mentality whereby one need

only obey the letter of the law continued to flourish during Gen Boyle's tenure. As one witness put it, a requester will get only what is specifically asked for, and this may mean that he or she will receive nothing if the wrong terminology is employed.²⁴¹

The RTQs requested by Mr. McAuliffe dealt with highly sensitive issues related to the Somalia deployment, such as the incident of March 4, 1993 involving the killing and wounding of Somali nationals, the March 16, 1993 beating death of a Somali teenager, and the apparent attempted suicide of MCpl Matchee on March 17th.

While it was perhaps to be expected that the public affairs branch of a department would try to minimize the adverse impact of such incidents on the department, the end cannot justify the means. It cannot justify the establishment of a process that, through deceit, provides the public with misleading, incomplete, or inaccurate information under the Access to Information Act. It cannot justify, under the cover of a change in policy, the ruse of allowing a change in the name of official documents, from Response to Query to Media Response Line, to avoid disclosure obligations under the Access to Information Act. Finally, it cannot justify impeding the public's legitimate right to know about important aspects of the Somalia operation or covering up embarrassing or controversial information relating to that operation.

FINAL REMARKS

The effect on our work of the shortcomings in the production of documents cannot be overstated. We depended on the receipt of accurate information from the Department on a timely basis to be able to decide which issues to investigate and how the hearings were to be conducted. The fact that the production was not timely and the documents were incomplete to such a large extent meant that the work of the Inquiry was delayed and that our staff were constantly occupied with document-related issues.

Despite these obstacles, we were able to examine a number of issues carefully and thoroughly. Although we made steady progress in our work, the cumulative effect of the document-related setbacks was not limited to inconvenience and delay. Ultimately, in conjunction with other factors, the delay caused by document-related issues resulted in the Government's sudden announcement calling for an end to the hearings and an accelerated reporting date. The unfortunate result was that many important witnesses were not heard, and several important questions that prompted the creation of our Inquiry remain unanswered.

Perhaps the most troubling consequence of the fragmented, dilatory, and incomplete documentary record furnished to us by DND is that, when this activity is coupled with the incontrovertible evidence of document destruction, tampering, and alteration, there is a natural and inevitable heightening of suspicions of the existence of a cover-up that extends into the highest reaches of the Department of National Defence and the Canadian Forces.

It is clear that rather than assisting with the timely flow of information to our Inquiry, DND adopted a strategic approach to deal with the Inquiry and engaged in a tactical operation to delay or deny the disclosure of relevant information to us and consequently to the Canadian public.

FINDINGS

From the preceding analysis of events involving the reaction of the Somalia Inquiry Liaison Team (SILT) and the Directorate General of Public Affairs (DGPA) within the Department of National Defence (DND),

We find that the Department of National Defence, through DGPA and SILT, failed to comply with our order for production of documents by failing to ensure the integrity of the documents, and by failing to provide them in a timely manner. More specifically,

- *The Department and SILT failed to make adequate provision for the complete and timely production of documents in the following ways:*
 - (a) *there was no adequate methodology to ensure that relevant documents were sent to SILT from all sources;*
 - (b) *the systems at SILT for controlling and managing the documents were inadequate;*
 - (c) *the Department did not ensure sufficient resources for the size of SILT's undertaking;*
 - (d) *SILT failed to ensure the quality of document deliveries and failed to provide adequate explanatory materials and lists;*
 - (e) *SILT adopted an unacceptably passive position of responding to issues before the Inquiry;*
 - (f) *SILT and DND failed to take active steps to address issues as they unfolded; and*
 - (g) *by failing to review our hearing books in a timely manner, SILT threatened to interrupt the smooth functioning of our hearings.*

- SILT failed to assist us adequately in fulfilling our requests for additional information by:
 - (a) not promptly delivering many requested documents;
 - (b) not providing satisfactory explanations for lengthy delays and other problems;
 - (c) not satisfactorily resolving many problems;
 - (d) showing insufficient initiative and failing actively to pursue important requests; and
 - (e) not disclosing the existence of all internal departmental e-mail documents relevant to the Inquiry.
- The Department (through the Office of the Counsel for the Government of Canada or OCGC) did not provide us with a list of documents for which solicitor/client privilege was claimed on a timely basis. The Department and OCGC took an overly broad view of solicitor/client privilege and failed to explain satisfactorily the presence of many documents of questionable privilege among the legal documents.
- The DGPA failed to comply with our order for the production of documents by:
 - (a) failing to take appropriate measures to comply and ensure compliance with our order in the stipulated time frame;
 - (b) taking deliberate and blatant steps to avoid compliance with our order by attempting to destroy Somalia-related documents; and
 - (c) failing to inform the Inquiry about attempts to destroy documents.
- The DGPA failed to comply and ensure compliance with the letter and spirit of the Access to Information Act by:
 - (a) improperly and illegally altering Somalia-related documents requested first informally and then formally under the act by a reporter, in particular by making deletions from documents, not informing the requester of such deletions, and reformatting the documents to make them appear full and complete;
 - (b) making an unsuccessful attempt to frustrate the proper functioning of Access to Information legislation by charging prohibitively high fees to someone requesting a search for information that was readily available;

- (c) changing the name of documents called Responses to Queries (RTQs) to Media Response Lines (MRLs) in order to deny a request for RTQs that the Directorate had anticipated; and
 - (d) failing to inform the requester that the name of the documents had been changed and still not providing some 35 documents that had been produced under the old name.
- The chain of command within the DGPA failed by:
 - (a) not reacting diligently upon discovery of an attempt to destroy documents. This attempt amounted to a failure to comply with a legal order to produce documents and was associated with allegations of an illegal military order to destroy such documents, and allegations of cover-up;
 - (b) calling for an internal administrative review rather than a military police review immediately upon learning about attempted destruction of Somalia-related documents; and
 - (c) not informing us of the existence and attempted destruction of Somalia-related documents.
 - SILT's chain of command, in relation to activities within the DGPA, failed to assume its leadership obligations and organizational responsibilities to ensure compliance with our order by:
 - (a) failing to inform us of the existence of Somalia-related documents within the DGPA and the attempted destruction of such documents; and
 - (b) failing to take the appropriate steps or to put in place a proper procedure for immediate retrieval and forwarding of the documents in question.
 - The Department failed to ensure that a complete record of in-theatre message traffic to NDHQ was maintained by:
 - (a) not having in place standing operating procedures to ensure that National Defence Operations Centre (NDOC) logs were accurately recorded;
 - (b) not providing personnel with a good understanding of the purpose of maintaining NDOC logs;
 - (c) providing inadequate training to duty officers; and
 - (d) not using system audits to ensure that the record was being properly maintained.
 - The Department failed to preserve adequate records relating to in-theatre operations by:

- (a) inadequately maintaining logs;
- (b) having disregard for the integrity of logs as evidenced by many incomplete sets;
- (c) not properly attaching logs to war diaries; and
- (d) failing to understand the importance of maintaining logs, preserving logs, and ensuring their delivery to the Inquiry.

Recommendations

We recommend that

- 39.1 The Department of National Defence ensure that the National Defence Operations Centre logs are properly maintained, by implementing the following:**
 - (a) an audit procedure to ensure that standing operating procedures provide clear and sufficient guidelines on the type of information to be entered and how the information is to be entered;
 - (b) an adequate data base system, which includes software controls to ensure accurate data entry in each field and appropriate training for operators and users of this system; and
 - (c) increased system security to an acceptable standard compatible with the objective of national security, including restricting access to authorized persons using only their own accounts and passwords, and extending the use of secure (hidden) fields to identify persons entering or deleting data.
- 39.2 The Department of National Defence and the Canadian Forces take steps to ensure that an adequate record of in-theatre operations is created and preserved thereafter by:**
 - (a) establishing better systems and procedures to ensure a more complete and permanent record of events, including the recording of each day's activity or inactivity, so that every date is accounted for, to avoid the appearance of non-reporting or deleted records;

- (b) training soldiers to appreciate the importance of the log and diary and their responsibility to follow proper procedures in creating, maintaining, and protecting the record;
 - (c) providing better procedures for supervising the maintenance of records in theatre to ensure adherence to established procedures;
 - (d) improving the integration of secure data collection and storage systems to ensure the integrity of records created; and
 - (e) ensuring that data banks are sufficient and include accurate information concerning individual taskings; the start and finish dates of each log and diary; and the location of records.
- 39.3 The Department of National Defence take the following steps to promote openness and transparency:
- (a) require the Deputy Minister of National Defence and the Chief of the Defence Staff to:
 - (i) instil by example and through directives the importance of openness in responding to requests made under the *Access to Information Act*;
 - (ii) ensure that military and civilian personnel in the Department of National Defence are better trained to respond to *Access to Information Act* requests, particularly with regard to legal obligations and procedures; and
 - (iii) ensure that staff fully understand the requirement to report, as a significant incident under existing regulations, any suspected document alteration or improper response to *Access to Information Act* requests;
 - (b) begin consultations with the Information Commissioner, within three months of the submission of this report to the Governor in Council, to determine the most effective way of improving departmental responses to *Access to Information Act* requests; and
 - (c) ensure that public affairs policy and practices reflect the principles of openness, responsiveness, transparency and accountability expressed throughout this report.
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ANNEX A

Chronology of Events

The following chronology is based on evidence before us.

1993

- January 3 Significant Incident Reports (SIRs) commenced.
- January 4 Ms. Kim Campbell becomes Minister of National Defence.
- January 22 Mr. Robert R. Fowler, the Deputy Minister of National Defence, tells the Daily Executive Meeting (DEM) that Ms. Campbell enjoyed excellent media relations and was not about to jeopardize them.
- February MGen Boyle becomes Associate Assistant Deputy Minister for Policy and Communications.
- March 1 Mr. Fowler directs DND to keep as low a profile as possible; practise “extreme sensitivity” when making public statements; senior staff to prepare a list of “politically sensitive” subjects and to return it to the Vice Chief of the Defence Staff (VCDS), LGen O’Donnell, no later than March 3, 1993; pointed out the need for DND to inform Ms. Campbell fully about any operational or emergency situations that might oblige her to respond quickly.
- March 4 The March 4th incident (shooting of two Somali nationals at the Canadian compound at Belet Huen) occurs in Somalia.
- March 8 LGen O’Donnell receives list of “sensitive” subjects.
- Mr. Fowler asks that the list be updated and provided to him before his regular weekly Monday meetings with Ms. Campbell.
- Adm Anderson, Chief of the Defence Staff (CDS), tells officers in Somalia to keep a low profile and not to make waves.
- June The Ottawa Citizen contemplates legal action to get information about Somalia.
- Michael McAuliffe, CBC radio news reporter, makes informal request to DND for Somalia-related information.
- Mr. Roberto Gonzalez becomes Director General of Public Affairs (DGPA).

- "Tiger Team" led by Col (later BGen) G.K. McDonald, Director of the NDHQ Secretariat, charged with analyzing Phase I of the report of the Board of Inquiry, Canadian Airborne Regiment Battle Group (the de Faye Board of Inquiry).
- July 19 The de Faye Board of Inquiry submits Phase I of its report to the CDS.
- July 28 MGen Boyle directs the commanders of all CF commands to work through the DGPA when releasing Somalia-related information.
- August Mr. Gonzalez formulates plans for a system of account managers within the DGPA; provides his plans to Dr. Calder via MGen Boyle.
- August 20 LGen O'Donnell writes to Dr. Calder, the Deputy Chief of the Defence Staff, the ADM (Personnel), the Senior ADM (Materiel), the ADM (Finance), the Judge Advocate General (JAG), and the commanders of CF commands acknowledging that DND had responded incompletely and on certain points erroneously to some recent *Access to Information Act* requests for information about Somalia and the Canadian Airborne Regiment (CAR). He orders DGPA to co-ordinate all information released with the offices of the CDS and the Deputy Minister and urges them to ensure that requests are treated in accordance with the letter and spirit of the act.
- August 24 Mr. McAuliffe submits questions in writing to SLt Keough in the Directorate of Information Services Centre of Operations, raising 10 questions about the Significant Incident Report of March 19, 1993, concerning the apparent suicide attempt of MCpl Matchee.
- August 30 Mr. McAuliffe writes to Lt (N) Brayman posing three questions about compensation paid by DND with respect to the incident.
- August/
September Mr. McAuliffe visits DGPA.
- September 7 MGen Boyle institutes new procedures for the DGPA, including registering all calls (establishing a record of all conversations with the media) and requesting systems for recording conversations.

- September 20 Mr. McAuliffe informally requests Somalia-related Responses to Queries (RTQs) in a telephone call to Lt (N) Brayman, who communicated it to LCdr Considine, who passed it to Cdr Caie.
- September/ November Some time between September 21 and November 2, 1993, Ms. Nancy Fournier, DGPA staff member, alters 22 RTQs using a template given her by LCdr Considine.
- September 27 Somalia Working Group under MGen Boyle formed (by the Deputy Minister).
- September 29 From May 19 to September 29, 1993, DND received 15 requests under the Access to Information Act from Mr. McAuliffe.
- October MGen Boyle and Dr. Calder discuss Mr. McAuliffe's request for the DGPA's Somalia-related RTQs.
- October 26 Mr. Gonzalez's memorandum to MGen Boyle concerning Mr. McAuliffe's request for all RTQs about Somalia and related topics. It alludes to attached RTQs and recommends they be passed to him.
- November 1 Letter from Mr. Gonzalez to Mr. McAuliffe, accompanying Somalia-related RTQs. In office copy of letter, MGen Boyle adds a handwritten note to Dr. Calder commencing with the words "We spoke".
- November 2 Col Haswell, Director of Public Affairs Operations, signs a letter, on behalf of Mr. Gonzalez, to Mr. McAuliffe that accompanies the Somalia-related RTQs.
- November 15 MGen Boyle orders that all requests for historical documentation proceed through the Access to Information Act.
- late 1993 Col Haswell, becomes Director of Canadian Forces Public Affairs.
- 1994**
- January DGPA undergoes major reorganization, a 1-800 Media Info Line becomes operative, and the media start to receive written weekly summaries of CF operations based on the morning daily executive meeting notes.
- January 11 E-mail message from Mr. Milsom to Ms. Petzinger shows Mr. Fowler's staff as participating actively in processing an ATI request from Mr. McAuliffe under the act.

- January 20 Mr. McAuliffe files Access to Information Act request (A) 93/0411 seeking all RTQs prepared by or for the Media Liaison Office or Director General of Public Affairs branch of NDHQ between May 15, 1993 and January 16, 1994.
- The request reaches Mr. Gonzalez, who relays it to Cdr Caie who assigns it to LCdr Considine.
- January 24 Ms. Petzinger forwards Mr. McAuliffe's request to MGen Boyle.
- February 1 LCdr Considine writes to Maj Verville, estimating that it will take 413 hours to search and review the RTQs. He states 304 hours necessary to search the DISCO at a cost of \$4,080.
- February 7 Ms. Fournier consults the DISCO's 1993 RTQ binder, photocopies the originals and returns them to a grey binder.
- February 8 Ms. Fournier searches the DGPA's computer library for RTQs missing from the 1993 RTQ binder, prints out RTQs from the library, and inserts them in the grey binder — 90 RTQs in all — to December 1993. (Mr. McAuliffe had expressed interest in RTQs until January 16, 1994).
- February 10 Ms. Petzinger writes to the DGPA, pointing out that the RTQs should have reached the Access to Information and Privacy office (ATIP) a week earlier.
- February 15 LCdr Considine instructs Ms. Fournier to alter the RTQs.
- mid-February Mr. McAuliffe complains to ATIP.
- February 21 Ms. Petzinger writes Mr. Milsom enclosing for his signature a memorandum to Dr. Calder. She asserts that she had received neither a reply to her reminder to the DGPA nor any explanation for the delay.
- February 26 Mr. Milsom writes to Mr. McAuliffe, advises him that the analysis of his request is not complete and that he can complain to the Information Commissioner.
- March 4 Ms. Fournier completes and checks RTQs and returns them to LCdr Considine.
- March 8 Col Haswell forwards a memorandum to the Deputy ATIP Co-ordinator, Ms. Petzinger, attaching 68 RTQs prepared by the DGPA between May and December 1993. He includes no RTQs for January 1994, explaining that the regular format for RTQs was abandoned after the 1-800 Media Info Line became operative in January 1994.

- March 11 Maj Verville dispatches a Minute Sheet to Cdr Caie stating Col Haswell's signature did not represent a valid sign-off.
- March 11 RTQ package allegedly passed to MGen Boyle.
- March 15 Ms. Fournier forwards a note to Cdr Caie reporting that she and Lt (N) Brayman had completed the time log on the inner cover of the folder for Mr. McAuliffe's request.
- March 18 MGen Boyle forwards a note to the DGPA asserting that the RTQs spanned the responsibilities of all group principals and affirming that he assumed that the various account managers had examined the RTQs falling within their sphere and assumed responsibility for their release. He asks Mr. Gonzalez to institute the proper sign-off system.
- March 21 Cdr Caie makes a note to file stating that RTQs were going to each group principal for review.
- May 2 Maj Verville calls for a situation report — still has received no RTQs.
- May 10 LCdr Considine writes to MGen Boyle asserting that each DGPA account manager, acting for the respective ADM, has approved releasing the RTQs.
- May 11 MGen Boyle signs the memorandum to Mr. Milsom stating that all 68 enclosed RTQs were ready to be released without severance with three exceptions.
- May 16 Mr. Milsom writes to Mr. McAuliffe, conveying the records received from MGen Boyle.
- June 7 Mr. McAuliffe files a second Access to Information Act request for RTQs. He requested copies of all RTQs "prepared by or for the Media Liaison Office or Director General Public Affairs branch at National Defence Headquarters between the dates of January 17th, 1994 and June 7th, 1994."
- June 15 Mr. McAuliffe's request (A) 94/0136 reaches the DGPA.
- mid-June The DGPA has about 35 RTQs as described in the request.
- June 15 Memorandum from Ms. K.J. Namiesniowski, Mr. Fowler's Special Assistant, to Mr. Milsom about the staffing of sensitive requests under the act. Ms. Namiesniowski observes that Mr. Fowler liked to be apprised before any sensitive information was released under the act. She added: "This process must continue".

- June 17 MGen Boyle's memorandum to Mr. Milsom (ATIP) that RTQs had not been produced from January 1994 on and that the request was therefore "redundant".
- June 20 Col Haswell comments, "Fortunately...we now do not have official records of RTQs on subjects that have yet to be uncovered by the Media".
- June 23 Mr. Milsom writes to Mr. McAuliffe advising him that RTQs went out of use in January 1994.
- June 24 MGen Boyle forwards a note to Ms. Cardinal in which he affirms that he thought that RTQs were no longer in currency.
- July 29 MGen Boyle provides a definition of the Somalia Working Group's mission.
- September 29 RTQs now in a file in Col Haswell's office.

1995

- Spring Commission of Inquiry into the Deployment of Canadian Forces to Somalia orders Somalia-related information from DND under *Inquiries Act*.
- April 21 Chairman's order for production.
- September 5 Attempt within DGPA to destroy Somalia-related documents.
- September 15 Lt (N) Wong meets the director of the DGPA and suggests that an investigation be conducted on the attempt to destroy Somalia-related documents.
- September 22 Internal administrative review by the Chief Review Services ordered on the alteration of documents, but not on the attempt to destroy Somalia-related documents.
- October 16 Mr. McAuliffe complains to Mr. Grace, the Information Commissioner, that the records forwarded on May 16, 1994 had been wrongfully altered before release.
- The National Investigation Service (NIS) is tasked to investigate allegations that documents within were destroyed and altered.

1996

January 24	NIS police report produced.
March 12 to April 12	Commission of Inquiry receives the NIS police report.
March 26	Mr. Grace presents his findings to the Deputy Minister, M ^{me} Louise Fréchette.
April 9	MGen Boyle institutes CF-wide search for Somalia-related documents.
April 15	NIS Police reopens its investigation.
June 11	Second NIS police report (Addendum) produced as a result of the reopening of the investigation.
June 17	Commission of Inquiry receives the second NIS police report.

NOTES

1. Testimony of Col Leclerc, Transcripts vol. 56, p. 11121.
2. Document book 100A, tab 14, DND 347392.
3. Document book 100A, tab 14, DND 347393.
4. Testimony of Col Leclerc, Transcripts vol. 56, p. 11157; and Gen Boyle, Transcripts vol. 86, p. 16915.
5. Document book 100A, tab 14, DND 347393-347394.
6. Exhibit P-162, Terms of Reference, Special CF/DND Adviser, June 27, 1995.
7. See Exhibit P-8, Order issued to the Clerk of the Privy Council, May 18, 1995; Exhibit P-7, Order issued to the Deputy Minister of Foreign Affairs, May 18, 1995; and Document book 100A, tab 1.
8. Document book 100A, tab 1. In a letter dated May 23, 1995, counsel for the Government of Canada, Peter Vita, asked us whether subparagraph (a) of the order required only a list of relevant documents or whether the documents themselves were required as well. Commission counsel replied in a letter dated June 6, 1995, making it clear that both the documents and a list were required, and everyone proceeded upon that understanding.
9. Exhibit P-163, letter, LCol Carter to Barbara McIsaac, Commission counsel, June 30, 1995.
10. Exhibit P-163.
11. Testimony of Col Leclerc, Transcripts vol. 56, p. 11121.
12. Testimony of Col Leclerc, Transcripts vol. 56, p. 11174.
13. Document book 100A, tab 17.
14. Testimony of Col Leclerc, Transcripts vol. 56, pp. 11144-11146.
15. Testimony of Col Leclerc, Transcripts vol. 56, p. 11137.

16. Testimony of Gen Boyle, Transcripts vol. 86, pp. 16926–1692627.
17. Testimony of Col Leclerc, Transcripts vol. 56, p. 11142.
18. Document book 100A, tab 14, DND 347392.
19. Testimony of Col Leclerc, Transcripts vol. 56, pp. 11140–11141.
20. Letter, Barbara McIsaac to Col Leclerc, January 26, 1996.
21. Request 370, letter, Gail Bradshaw, Inquiry staff, to Alain Préfontaine, October 23, 1996.
22. Letter, Alain Préfontaine to Gail Bradshaw, March 18, 1997.
23. Request 367, letter, Gail Bradshaw to Alain Préfontaine, October 17, 1996.
24. Letter, Alain Préfontaine to Gail Bradshaw, November 14, 1996.
25. Letter, Stanley Cohen, Commission Secretary, to Alain Préfontaine, October 21, 1996.
26. Request 84, letter, Paul Harte, Inquiry staff, to Col Leclerc, October 11, 1995; Request 185, letter, Paul Harte to Col Leclerc, December 11, 1995.
27. Letter, Barbara McIsaac to Col Leclerc, January 25, 1996, requiring prompt delivery of certain DEM-related documents.
28. Letter, Col Leclerc to Paul Harte, March 11, 1996.
29. Because of these discrepancies, a further comprehensive request was made for documents related to daily executive meetings (DEM) in a letter from Stanley Cohen to LGen (ret) Fox, May 24, 1996.
30. Letter, Col Leclerc to Stanley Cohen, October 10, 1996.
31. Minutes of DEM, February 8, 1993, Document book 50A, tab 18.
32. For example, in December 1995, although 16 DEMs were held, there were no DEM minutes (and no post-DEM minutes).
33. Staff and Writing Procedures for NDHQ (A-AD-D30-001/JS-001), p. 6-4-5.
34. Letter, Col Leclerc to Stanley Cohen, October 10, 1996.
35. Request 382, letter, Gail Bradshaw to Col Leclerc, November 27, 1996.
36. Letter, Gail Bradshaw to Col Leclerc, January 28, 1997.
37. Letter, Col Leclerc to Gail Bradshaw, March 9, 1997.
38. Letter, Paul Harte to Col Leclerc, January 31, 1996.
39. Letter, Gail Bradshaw to Col Leclerc, June 11, 1996.
40. Request 414, letter, Gail Bradshaw to Col Leclerc, February 17, 1997.
41. Request 185, letter, Paul Harte to Col Leclerc, December 11, 1995; Request 186, letter, Paul Harte to Col Leclerc, December 12, 1995.
42. Annex D of Letter, Col Leclerc to Paul Harte, March 12, 1996.
43. Annex A of Letter, Col Leclerc to Gail Bradshaw, October 4, 1996.
44. Request 418, letter, Gail Bradshaw to Col Leclerc, February 24, 1997.
45. Letter, Gail Bradshaw to Col Leclerc, March 12, 1997.
46. Letter, Col Leclerc to Gail Bradshaw, March 24, 1997.
47. See discussion of privileged documents below.
48. Request 307, letter, Gail Bradshaw to Col Leclerc, May 23, 1996.
49. Document book 100A, tab 14, DND 347392.
50. Letter, Stanley Cohen to LGen (ret) Fox, May 21, 1996.
51. Letter, Stanley Cohen to MGen Tousignant, June 17, 1996.
52. Letter, MGen Tousignant to Stanley Cohen, June 18, 1996.
53. Letter, Stanley Cohen to MGen Tousignant, June 25, 1996.
54. Letter, MGen Tousignant to Stanley Cohen, August 30, 1996.
55. Exhibit P-160.
56. Exhibit P-160, DND360530.

- 57.. Exhibit P-160, DND 360529.
58. Testimony of LGen Reay, Transcripts vol. 80, p. 15640.
59. Request 292, letter, Gail Bradshaw to Col Leclerc, May 9, 1996.
60. Testimony of MGen Vernon, Transcripts vol. 80, p. 15555.
61. Testimony of MGen Vernon, Transcripts vol. 79, pp. 15499–15500.
62. Testimony of MGen Vernon, Transcripts vol. 80, p. 15555.
63. Request 087, letter, Paul Harte to Col Leclerc, October 12, 1995.
64. Letter, Col Leclerc to Paul Harte, October 22, 1995.
65. Letter, Gail Bradshaw to Col Leclerc, June 6, 1996.
66. Letter, Col Leclerc to Gail Bradshaw, October 25, 1996.
67. Request 266, letter, Gail Bradshaw to Col Leclerc, May 10, 1996.
68. Letter, Col Leclerc to Gail Bradshaw, July 15, 1996.
69. Letter, Stanley Cohen to MGen Tousignant, June 25, 1996.
70. Letter, Paul Harte to Col Leclerc, October 18, 1995.
71. Letter, Col Leclerc to Gail Bradshaw, June 20, 1996.
72. Request 015, letter, Paul Harte to Col Leclerc, September 18, 1995.
73. Letter, Col Leclerc to Paul Harte, October 16, 1995.
74. Letter, Col Leclerc to Paul Harte, February 14, 1996, forwarding a letter from Col A.J. Fenske to SILT Legal Counsel, October 30, 1995.
75. Letter, Col Leclerc to Gail Bradshaw, January 17, 1997.
76. Request 113, letter, Paul Harte to Col Leclerc, November 2, 1995.
77. Letter, Paul Harte to Col Leclerc, December 20, 1995.
78. Request 275, letter, Paul Harte to Col Leclerc, April 1, 1996; Request 277, letter, Paul Harte to Col Leclerc, April 11, 1996 (added to Request 275).
79. Letter, Gail Bradshaw to Col Leclerc, August 26, 1996.
80. Letter, Col Leclerc to Gail Bradshaw, January 21, 1997, forwarded documents relating to Request 277; letter, Col Leclerc to Gail Bradshaw, January 22, 1997, forwarded documents relating to Request 275.
81. Request 174, letter, Paul Harte to Col Leclerc, December 8, 1995.
82. Letter, Col Leclerc to Paul Harte, February 20, 1996.
83. Letter, Gail Bradshaw to Col Leclerc, December 20, 1996.
84. Letter, Col Leclerc to Gail Bradshaw, February 3, 1997.
85. Testimony of Col O'Brien, Transcripts vol. 10, pp. 1869, 1875.
86. Investigative Details of Military Police Investigation NIS 621-01095 (hereafter, NIS Investigative Details), Document book 101A, tab 4, p. 1.
87. Testimony of Col Leclerc, Transcripts vol. 56, p. 11186.
88. Submissions of Commission Counsel Re: Investigation of the NDOC Computer Log, Document book 101C, tab A, p. 2-3, paragraph 5(a) 1, 2, 3.
89. Document book 101, tab 1, DND 346484.
90. Submissions of Commission Counsel Re: Investigation of the NDOC Computer Log, Document book 101C, tab A, p. 3, paragraph 5(c).
91. Submissions of Commission Counsel Re: Investigation of the NDOC Computer Log, p. 3, paragraph 5(c). See also NIS Investigative Details, Document book 101A, tab 4, p. 2.
92. NIS Investigative Details.
93. NIS Interview with LCol Arbuckle, May 31, 1996, Ottawa, Document book 101A, tab A, p. 3, paragraph j; and NIS Interview with LCdr Bastien, May 14, 1996, Toronto, Document book 101A, tab B, p. 2, paragraph i.

94. Compare NIS Interview with LCdr Bastien, May 14, 1996, Toronto, Document book 101A, tab B, p. 2, paragraph i; NIS Interview with Cdr Silvester, May 27, 1996, Victoria, B.C., Document book 101A, tab G, p. 1, paragraph c; and NIS Interview with Cdr Keenliside, April 11, 1996, Halifax, N.S., Document book 101A, tab D, p. 3, paragraph k.
95. NIS Report of Investigative Findings, October 17, 1995, Document book 101, tab 1, p. 2, paragraph 5.
96. NIS Interview with Cdr Keenliside, April 11, 1996, Halifax, N.S., Document book 101A, tab D, p. 1, paragraph d.
97. NIS Interview with Cdr Silvester, May 27, 1996, Victoria, B.C., Document book 101A, tab G, p. 2, paragraph f.
98. Testimony of Col O'Brien, Transcripts vol. 151, p. 30904.
99. NIS Interview with LCdr Kuzyshyn, May 24, 1996, Dartmouth, N.S., Document book 101A, tab E, p. 2, paragraph k.
100. NIS Interview with LCdr Towns, May 25, 1996, Sackville, N.S., Document book 101A, tab J, p. 1, paragraph d.
101. Covering letter, NIS Report, July 9, 1996, Document book 101A, tab 1, p. 1, paragraph 3.
102. Operations Log, Document book 99, tab B, Annex 3C, p. 3C-1, paragraph 3.
103. Testimony of Gen Boyle, Transcripts vol. 87, p. 16994.
104. War Diary Journal, Document book 99, tab 3, paragraph 23 (emphasis in the original).
105. Document book 99A, tab 1, Summary of Operations Logs, p. 4, paragraph 2.2.
106. Document book 99A, tab 1, Summary of Operations/Communications Logs and other Records.
107. Testimony of Gen Boyle, Transcripts vol. 87, p. 17049.
108. Opening remarks of counsel, April 15, 1996, Transcripts vol. 56, pp. 11076–11077.
109. Letter, Stanley Cohen to LGen (ret) Fox, January 17, 1996, Document book 100A, tab 2.
110. Letter, Col Leclerc to Barbara McIsaac, February 9, 1996, Document book 100A, tab 6.
111. Testimony of Gen Boyle, Transcripts vol. 87, p. 17059.
112. Annex A to letter, Lynn Lovett to Col Leclerc, April 3, 1996, Document book 100A, tab 10.
113. Opening remarks of Commission Counsel, Transcripts vol. 56, p. 11084; and Log Investigation Summary, Document book 99A, tab 7, DND 385548.
114. Testimony of Maj Pommet, Transcripts vol. 107, pp. 21478–21480, and vol. 108, pp. 21517–21518.
115. Memo, LCol Pittfield, “Log Search”, April 10, 1996, Document book 99A, tab 8. Annex A, p. 2, indicates that they were found on shelves in 2 Commando's signals stores.
116. Testimony of Gen Boyle, Transcripts vol. 87, p. 17015.
117. Letter, Col Leclerc to Gail Bradshaw, May 7, 1996, Document book 99A, tab 4, Annex A, p. 1, paragraph 1.
118. Letter, Maj Messier to SILT, April 17, 1996, Document book 99A, tab 4, p. 1, paragraph 2.
119. Statement of MCpl Beattie regarding J2 Logs, Document book 99A, tab 4, pp. 1–2.
120. Letter, Maj Messier to SILT, April 17, 1996, Document book 99A, tab 4, p. 2, paragraph 4.
121. CJFS HQ notes (Capt St. Denis), Document book 99A, tab 2, p. 2.

122. Letter, Maj Messier to SILT, April 17, 1996, Document book 99A, tab 4, p. 2, paragraph 4.
123. Letter, Maj Messier to SILT, April 17, 1996, Document book 99A, tab 4, p. 1, paragraph 1.
124. Statement of WO Beldam, Document book 92A.1, tab I, Annex AA, p. 3, paragraph 5.
125. Supplementary Statement of WO Beldam, Document book 92A.1, tab I, Annex AA, pp. 1–2, answer to question 3.
126. Exhibit P-143.6
127. Because the Inquiry valued the ability to retrieve individual documents, it relied on its own system of identifying and tracking documents. The quantity of paper received and the printed versions of files received on computer disk totalled more than 200,000 pages, corresponding to more than 52,000 documents as identified by the Inquiry.
128. Letter, Stanley Cohen to LGen (ret) Fox, April 11, 1996.
129. Letter, Col Leclerc to Simon Noël, Commission counsel, May 28, 1996.
130. Letter, John Koh to LCdr MacArthur, June 13, 1996.
131. Document books 39 and 39A were sent to SILT in February 1996 and returned to the Inquiry on August 16, 1996.
132. For example, letter, Barbara McIsaac to Col Leclerc, June 3, 1996.
133. For example, letter, Stanley Cohen to MGen Tousignant, July 23, 1996.
134. Document books, volumes 51–51E.
135. Letter, Col Leclerc to Gail Bradshaw, January 21, 1997.
136. Document book 100A, tab 1.
137. Letter, Simon Noël to Brian Evernden, September 11, 1996.
138. Letter, Lynn Lovett to Brian Evernden/LCol Callan, November 12, 1996.
139. Letter, Lynn Lovett to Brian Evernden/LCol Callan, November 12, 1996.
140. Letter, Lynn Lovett to Brian Evernden/LCol Callan, November 12, 1996.
141. Memorandum, Lynn Lovett to Commissioners, January 17, 1997.
142. Letter, LCol Callan to Lynn Lovett, November 13, 1996.
143. Letter, Lynn Lovett to LCol Callan, November 13, 1996.
144. These figures are based on the Inquiry's own records of documents received and processed. SILT's figures appear to differ to some extent based on a different method of counting documents, but there is also the strong likelihood that SILT's numbers are inaccurate as a result of incomplete records. See, for example, Gen Boyle's testimony that SILT's system of document registration was overwhelmed (Transcripts vol. 86, pp. 16926–16927).
145. Filed as Document books 48A and 48B.
146. Exhibit P-143.6.
147. Testimony of Gen Boyle, Transcripts vol. 86, pp. 16923–16927.
148. Document book 100A, tab 1.
149. Testimony of Ruth Cardinal, Transcripts vol. 74, p. 14467. The CANFORGEN was an order signed by LGen Boyle on behalf of the Chief of the Defence Staff and addressed to all units of the CF and DND, requiring them to co-operate with the Inquiry and to comply with any request made by SILT with respect to Somalia-related documents (see Document book 100A, tab 15).
150. Memorandum, Col Hillier, April 6, 1995, Document book 100A, tab 14.
151. See Exhibit P-162.

152. Testimony of Ruth Cardinal, Transcripts vol. 74, pp. 14470–14471.
153. Testimony of Lt (N) Brayman, Transcripts vol. 65, pp. 12689–12690; and Ruth Cardinal, Transcripts vol. 74, p. 14475.
154. Testimony of Claudette Lemay, Transcripts vol. 58, pp. 11425–11426; Nancy Fournier, Transcripts vol. 62, pp. 12131–12132, 12139; and Lt (N) Brayman, Transcripts vol. 65, pp. 12688–12690.
155. Testimony of Ruth Cardinal, Transcripts vol. 74, pp. 14482, 14488, 14489.
156. Testimony of Ruth Cardinal, Transcripts vol. 74, p. 14480.
157. Testimony of Nancy Fournier, Transcripts vol. 62, pp. 12132–12135.
158. Testimony of Nancy Fournier, Transcripts vol. 63, p. 12323.
159. Testimony of Lt (N) Brayman, Transcripts vol. 65, pp. 12640, 12696–12698, 12707, 12720.
160. Testimony of Nancy Fournier, Transcripts vol. 62, pp. 12145–12146, and vol. 63, pp. 12186–87; and of Lt (N) Brayman, Transcripts vol. 65, pp. 12694–12695.
161. Testimony of Ruth Cardinal, Transcripts vol. 74, pp. 14486–14487.
162. See Exhibit P-158, Document on Investigation into Release of RTQs signed by Gen de Chastelain, September 22, 1995.
163. See Exhibit P-158.1, Chief Review Services Special Examination, October 7, 1995; and testimony of Ruth Cardinal, Transcripts vol. 75, pp. 14572–14573.
164. Testimony of Lt (N) Brayman, Transcripts vol. 66, p. 12758.
165. Testimony of Lt (N) Wong, Transcripts vol. 70, p. 13545.
166. Testimony of Lt (N) Wong, Transcripts vol. 70, pp. 13536, 13544–13545, 13567.
167. Testimony of LGen (ret) Fox, Transcripts vol. 77, p. 15126.
168. Testimony of LGen (ret) Fox, Transcripts vol. 77, p. 14987.
169. Testimony of MGen Vernon, Transcripts vol. 80, p. 15550.
170. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15010–15013.
171. Testimony of Lt (N) Wong, Transcripts vol. 70, p. 13594.
172. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15126–15128.
173. Testimony of LGen (ret) Fox, Transcripts vol. 77, p. 15020.
174. Testimony of LCol Carter, Transcripts vol. 76, p. 14919.
175. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15027–15030.
176. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15036–15043. One exception would be Ms. Cardinal who, according to the testimony of Lt (N) Brayman, Lt (N) Wong, and Mrs. Fournier, had not even been given the full picture.
Testimony of Lt (N) Brayman, Transcripts vol. 66, pp. 12759–12760; Lt (N) Wong, Transcripts vol. 70, pp. 13614–13615; and Mrs. Fournier, Transcripts vol. 63, p. 12195.
177. Testimony of LGen Reay, Transcripts vol. 80, pp. 15621–15622.
178. Testimony of LGen Reay, Transcripts vol. 80, p. 15623.
179. Testimony of LGen Reay, Transcripts vol. 80, pp. 15627–15628.
180. Testimony of LGen Reay, Transcripts vol. 80, p. 15628.
181. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15049–15052.
182. Testimony of LCol Carter, Transcripts vol. 76, pp. 14919–14939.
183. Testimony of LCol Carter, Transcripts vol. 76, pp. 14922–14923.
184. Testimony of LCol Carter, Transcripts vol. 76, p. 14923.
185. Testimony of Lt (N) Wong, Transcripts vol. 70, pp. 13544–13545.
186. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15127–15128.
187. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15046–15049.

188. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15012, 15053, 15065–15067, 15142.
189. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15053–15055, 15098.
190. Testimony of LGen (ret) Fox, Transcripts vol. 78, pp. 15288–15289.
191. Testimony of LGen (ret) Fox, Transcripts vol. 77, pp. 15014–15015, 15039–15040, 15136–15137.
192. See the exchanges on this subject that occurred during the testimony of Lt (N) Brayman, Transcripts vol. 68, pp. 13177–13180, 13193–13203.
193. Testimony of LGen (ret) Fox, Transcripts vol. 77, p. 15002.
194. Testimony of Roberto Gonzalez, Transcripts vol. 58, pp. 11547, 11551.
195. Testimony of Col Haswell, Transcripts vol. 95, pp. 18395–18396, 18399–18400.
196. Testimony of Roberto Gonzalez, Transcripts vol. 58, pp. 11553–11554, 11562–11563, vol. 59, pp. 11605–11606, 11649–11650, 11659, and vol. 111, pp. 22160–22161; and Col Haswell, Transcripts vol. 95, pp. 18437–18441, 18447–18450, 18465–18472; and Document book 103, tabs 1 and 2.
197. Testimony of Roberto Gonzalez, Transcripts vol. 111, pp. 22161–22162.
198. Testimony of Col Haswell, Transcripts vol. 95, pp. 18447–18448.
199. Testimony of Col Haswell, Transcripts vol. 95, pp. 18554–18555.
200. Testimony of Lt (N) Wong, Transcripts vol. 70, pp. 13470–13471.
201. Testimony of Roberto Gonzalez, Transcripts vol. 58, pp. 11555, 11557–11565, 11570, and vol. 59, pp. 11580–11581, 11605–11606; Nancy Fournier, Transcripts vol. 62, pp. 11983, 12057; and Col Haswell, Transcripts vol. 95, pp. 18418–18419, 18424, 18430–18432.
202. Testimony of Roberto Gonzalez, Transcripts vol. 59, pp. 11586–11587, 11627–11629.
203. Testimony of Roberto Gonzalez, Transcripts vol. 60, pp. 11808–11810.
204. Document book 103, tab 4.
205. Testimony of Nancy Fournier, Transcripts vol. 62, pp. 12033–12038, 12042–12043, 12055–12056.
206. Document book 103, tabs 17, 18 and 38.
207. Document book 103, tab 40.
208. Document book 103, tabs 36, 41 and 43.
209. Testimony of Nancy Fournier, Transcripts vol. 62, p. 12115; and Lt (N) Brayman, Transcripts vol. 65, p. 12687.
210. Document book 103, tabs 3, 5, 9, 10 and 11; and testimony of Gen Boyle, Transcripts vol. 88, pp. 17218, 17222–17225.
211. Testimony of LCdr Considine, Transcripts vol. 73, pp. 14129–14131.
212. Testimony of LCol Duchesneau, Transcripts vol. 74, pp. 14395–14396; and LCdr Considine, Transcripts vol. 73, pp. 14130–14131.
213. Testimony of LCdr Considine, Transcripts vol. 73, pp. 14131–14132.
214. Document book 103, tab 12.
215. Document book 103, tab 13.
216. Document book 103, tab 13; and testimony of Lt (N) Brayman, Transcripts vol. 67, pp. 12947–12948, 13079–13080.
217. Testimony of Nancy Fournier, Transcripts vol. 62, pp. 12048–12050.
218. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17233–17234; and Col Haswell, Transcripts vol. 95, p. 18521.
219. Document book 103, tab 25; Exhibits P-143.3 (RTQs) and P-143.5 (Access to Information Log).
220. Testimony of Nancy Fournier, Transcripts vol. 62, pp. 12053, 12060.

221. Testimony of Nancy Fournier, Transcripts vol. 62, p. 12066.
222. Testimony of Lt (N) Brayman, Transcripts vol. 65, pp. 12661–12662, 12670.
223. Testimony of Lt (N) Brayman, Transcripts vol. 67, pp. 12957–12986.
224. Testimony of Lt (N) Brayman, Transcripts vol. 67, p. 13051.
225. Testimony of Lt (N) Brayman, Transcripts vol. 65, pp. 12663–12665; and LCdr Considine, Transcripts vol. 73, pp. 14185–14186.
226. See, for example, Document book 103, tab 39, where the words MRL and RTQ were used interchangeably, as the “MRL” contains a reference to the date this “RTQ” was used. See also testimony of Nancy Fournier, Transcripts vol. 62, pp. 12110–12111, 12115–12116; Lt (N) Brayman, Transcripts vol. 65, pp. 12679, 12682, and vol. 67, p. 13090; Gen Boyle, Transcripts vol. 88, pp. 17208–17210; and Col Haswell, Transcripts vol. 95, pp. 18472–18475, 18479–18480, 18486, 18499; and Document book 100, tab 6, Annex Q for the perception of the staff.
227. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17217–17218.
228. Testimony of Ruth Cardinal, Transcripts vol. 74, pp. 14449–14452.
229. Testimony of Col Haswell, Transcripts vol. 95, pp. 18480–18484.
230. Document book 103, tab 42.
231. See Exhibit P-195; and testimony of Col Haswell, Transcripts vol. 95, pp. 18507–18515.
232. Testimony of Col Haswell, Transcripts vol. 95, pp. 18493–18495. See also Document book 103, tab 42, Col Haswell’s memorandum to Gen Boyle, which openly acknowledges this fact.
233. Testimony of Col Haswell, Transcripts vol. 95, pp. 18510–18515.
234. Testimony of Ruth Cardinal, Transcripts vol. 74, pp. 14448–14452.
235. See Exhibit P-167, NS 039772, paragraph 2.
236. See Exhibit P-167, NS 039771.
237. Testimony of Gen Boyle, Transcripts vol. 88, p. 17280.
238. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17220–17222.
239. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17221–17222.
240. Testimony of Gen Boyle, Transcripts vol. 88, pp. 17225–17228.
241. Testimony of Col Haswell, Transcripts vol. 95, pp. 18503–18505, 18548.

MILITARY JUSTICE

Every military operation faces external threats. Each also carries the potential for internal difficulty — through sheer accident or poor judgement, or as the result of deliberate action. How the structures of the military are designed to respond to these internal problems and how the leaders actually respond to them reveal whether the problems are aberrations in an otherwise well-functioning military justice system or whether they are evidence of systemic deficiencies.

Despite the time constraints facing us, we have been able to examine important in-theatre and post-deployment disciplinary incidents. It is abundantly clear that the military justice system is replete with systemic deficiencies that contributed to the problems we investigated. Without substantial change to the system, it will continue to demonstrate shortcomings in promoting discipline, efficiency, high morale and justice.

Essential to an understanding of the issues raised in this chapter is an appreciation of the extent to which the commanding officer is the central figure in the military justice system. The commanding officer has discretionary powers at most stages of the military justice process — before and during investigations, prosecutions and sentencing, and in the application of administrative and informal sanctions. This discretion is pervasive, overwhelming and largely unfettered.

In short, a commanding officer who learns of possible misconduct can convene a board of inquiry or order a summary investigation, a Military Police (MP) investigation, or an informal review of the allegation. Alternatively, the commanding officer may decide to take no action at all.

If the commanding officer chooses to have alleged misconduct investigated, the investigation may result in a recommendation for action against an individual. Again, the commanding officer may respond in any of several ways, among them disciplinary or administrative action or no action at all. If the commanding officer chooses a particular course of action within the

present disciplinary system — summary trial, for example — he or she often holds further discretionary powers.

Military Police may also decide to investigate possible misconduct. They can choose of their own accord to investigate and, within the law, select their investigative methods. However, their powers are, in practice, limited because they are in the chain of command. As well, other factors limit their effectiveness in traditional policing roles: their relative lack of investigative experience, their conflicting loyalties as soldiers and police, and the reluctance of superiors to allocate sufficient investigative resources.

The role of the Judge Advocate General (JAG) in investigations and the decision to prosecute is more limited than that of Military Police. In discharging the responsibility to provide legal advice to the decision makers in the military justice system, JAG officers may advise Military Police or the commanding officer on the legality of a particular investigative tool or they may help determine the appropriate charge. However, there is no requirement that JAG representatives be involved in investigations or charging decisions. JAG officers do, however, prosecute and defend Canadian Forces (CF) members for service offences in courts martial. The discretionary powers of the commanding officer, Military Police and JAG officers are described more fully in Volume 1, Chapter 7.

The following two sections of this chapter identify a broad range of difficulties that arose in investigating and responding to misconduct of CF members shortly before, during and after the deployment to Somalia. The fourth section describes the conditions within the military justice system that contributed to these difficulties. It also discusses the factors limiting the effectiveness and fairness of the military justice system and, ultimately, the ability of the CF to discharge its mandate. In a final section we argue for a significantly restructured military justice system to remedy many of the shortcomings of the present system. Appended to this chapter are two sets of tables — the first outlining over 100 incidents related to the Somalia operation and requiring investigation, and the second outlining the disciplinary and administrative action taken in response to them.

PROBLEMS IN INVESTIGATIONS

This section deals with the response of the military justice system to incidents with potential disciplinary implications or requiring investigation which occurred in-theatre and post-deployment. There are many examples of cases where the decision to investigate, the investigation itself, and the reporting of the investigation deviated from required procedure or from what would normally be expected in a fair justice system.

Decision to Investigate

As discussed in Chapter 7, commanding officers have primary responsibility in the decision to investigate and the mode of investigation. In some cases, such as when a charge is laid, they are required to investigate.¹ In other cases, they are required to investigate using a certain form of investigation. For example, if a CF member dies for reasons other than as a result of wounds received in action, a summary investigation or board of inquiry must be held.² As well, Military Police have powers to initiate their own investigations, although when they do so they must brief the appropriate commander, commanding officer or other person in charge at the earliest practical moment regarding the circumstances surrounding their investigation. However, in most cases the commanding officer decides whether to investigate and what kind of investigation to conduct.

Throughout the deployment to Somalia, and particularly before the March 16, 1993, death of Shidane Arone led to sending Military Police to examine this and other incidents in theatre, incidents that should have been investigated were not investigated in a timely manner, or were not investigated at all.

According to the documentation reviewed by the Inquiry, 62 incidents that required investigation occurred between the beginning of the deployment and March 16, 1993.³ These included allegations of serious criminal or disciplinary misconduct, such as mistreatment of detainees, killing of Somalis, theft of public property, and self-inflicted gunshot wounds. Yet not one of these incidents was investigated by Military Police at the time they occurred, not even the serious ones that ought to have been investigated by Military Police.

Summary investigations, which are conducted by a CF member (not Military Police) appointed by the commanding officer,⁴ were called promptly in only eight of the 62 cases, and informal or other investigations were likely held in an additional 27 cases.⁵ However, as explained in greater detail below, a summary investigation was sometimes an inappropriate choice, and some of the investigations themselves were performed inadequately.⁶

This leaves 27 incidents before March 16th that were not investigated at all in the period immediately after they occurred. These ranged from Canadian vehicles striking a land mine to allegations that the Force Commander stated, “I am looking forward to the first dead Somali” and “A case of champagne to the first one who gets (or kills) a Somali”, allegations of mistreatment of detainees, self-inflicted injury, theft, and the injury of a Somali by what was intended to be a warning shot.⁷

Of these 27 cases, 11 were never investigated.⁸ Summary investigations were conducted in two cases within a few months and, in the 14 remaining cases, investigations by Military Police were eventually conducted.⁹ However, eight of the MP investigations did not begin until over a year after the incidents took place.¹⁰

It is possible, of course, that a certain number of these incidents were not investigated at the time they occurred because those in authority were not aware of them. However, other problems occurred with investigations. There were too few Military Police. Regimental MP did not perform even the most limited investigative roles. Commanding officers were too slow to call in Military Police after some incidents occurred, and commanding officers paid little attention to guidelines indicating which types of investigations were appropriate.¹¹

Too Few Military Police and Military Police with Inappropriate Skills

There were no MP investigations before March 16th, in large part because only two Military Police accompanied the CARBG to Somalia. Furthermore, both operated as regimental Military Police, reporting to the commanding officer of the CAR. As regimental MP, their responsibilities should have included movement of troops, detention of detainees, and minor police duties (for example, investigating minor incidents).¹² However, because there were only two of them and they did not have any support, they did not fulfil even these roles. Instead, the two served primarily as a security escort for senior officers.¹³ They conducted no investigations and were not primarily responsible for the custody of detainees.¹⁴ Even if their numbers had been sufficient, as regimental MP they lacked the training and experience to investigate major disciplinary or criminal incidents.

Normally, regimental MP should be able to call on Military Police directed by a provost marshall or base security officer for technical support — for example, if regimental MP come across an incident that is beyond their investigative capabilities. However, no position for Military Police directed by a provost marshall or base security officer existed in the organizational structure of the CARBG.

Because there were not enough Military Police in theatre, two investigators had to be sent from Canada to investigate the death of Shidane Arone. Subsequently, two other MP teams of two were tasked to investigate the March 4th shooting of two Somali nationals.¹⁵ The first team investigated the incident itself, the second a possible cover-up of the incident by CF members in Somalia.¹⁶

Eventually, in May 1993, an MP unit was dispatched to Mogadishu. It assumed responsibility for more serious investigations and conducted several investigations.¹⁷ However, the trail in most cases was several months old. Only one incident that occurred before their arrival resulted in a prosecution.¹⁸

Commanding Officers Slow to Call in Military Police

The JAG suggested in its submission to the Inquiry that Military Police are employed in particular to investigate incidents involving anything other than very minor disciplinary infractions.¹⁹ Police policy also provides that Military Police "shall conduct an investigation and report on all criminal and serious service offences".²⁰ However, nothing in the regulations or administrative orders requires commanding officers to call in Military Police in these instances. In only a few cases are commanding officers required to carry out any kind of investigation — MP or otherwise — even if a criminal act is suspected.²¹

It appears that for Operation Deliverance, commanders chose not to follow the policies on MP investigations set out by the JAG and in the MP manuals. They appeared to believe that MP investigations were not required in an operational theatre and that most matters could be dealt with adequately by the other investigative tools available to the commanding officer.²²

Thus, as noted above, Military Police were not called to investigate many instances of possible serious misconduct. As well, in two cases where there was a clear indication of criminality — the alleged theft of a revolver and the death of Shidane Arone — Military Police were not called until after a soldier confessed.²³

The revolver incident involved a complaint that a CF soldier had seized a revolver from a Somali national employed by the International Committee of the Red Cross. When the Somali asked for its return, the Officer Commanding denied the allegation, since the CF soldier had reported returning the weapon. Subsequently, an anonymous call to Commando headquarters revealed that the soldier had mailed the revolver to his wife and later told her to get rid of it. The private at headquarters who received the anonymous call informed the soldier about it, and the soldier then confessed to his superior. Only then did the superior order the regimental MP to investigate.²⁴

The regimental MP interviewed the soldier, who now claimed that he had tried to return the weapon but that no one would accept its return. When additional Military Police arrived in May and reopened the investigation, they concluded that the weapon seizure had, in fact, been lawful. They also established that the weapon had not been turned over to the chain of command in accordance with the practice and policy of the CARBG. The soldier received an administrative sanction and was sent home. Against the advice of his superior, he was not disciplined.²⁵ It is not clear whether any

action was taken against the private who informed the soldier of the anonymous tip. No action was taken in relation to possible offences such as illegal importation of a weapon, illegal possession of a restricted weapon, or illegal use of the postal service.

The second case involved the death of Shidane Arone on March 16, 1993. Maj Seward, Officer Commanding 2 Commando, likely knew shortly after midnight on March 17th that Mr. Arone's injuries were suspicious.²⁶ However, Military Police were not called in to investigate until March 19th, after Pte Brown confessed his involvement.²⁷

The incident of March 4, 1993, involved the shooting death of one Somali citizen and the wounding of another. The incident was reported to National Defence Operations Centre on March 4th. The Director General Security at NDHQ, Col Wells, prepared a team of investigators for deployment to Somalia. However, the Deputy Chief of the Defence Staff, VAdm Murray, informed Col Wells that any decision regarding the deployment of MP investigators would be made following the receipt of a report from Col Labb  . The CO's investigation ordered by Col Labb   was to be completed within 24 hours, but no investigation report was received by NDHQ until March 23rd. Military police were not sent to investigate the March 4th incident until April 15th (see Chapter 38).

Guidelines for Calling Investigations Not Followed

The relevant regulations and administrative orders give discretion to commanding officers and certain other officers to decide, in most cases, whether to order an investigation and what kind of an investigation to order. In a few cases, boards of inquiry are mandatory, and in all serious matters, boards of inquiry are generally preferred to summary investigations. As well, the Canadian Forces Administrative Orders set out a list of occurrences where a board of inquiry or a summary investigation is usually required.²⁸ Included in this list are occurrences involving

- (a) casualties,
- (b) claims by or against the Crown,
- (c) injuries or death to CF members,
- (d) loss or damage due to criminal offences, or
- (e) loss of, or damage to, public property other than funds.²⁹

It is clear that commanding officers paid no attention to these guidelines in several cases. Several summary investigations were ordered, including investigations into the loss of Tilley hats, loss of a mail bag, theft of a sword and the death of Mr. Arone.³⁰ However, according to the guidelines, if those

in the position to call an investigation had known about the incidents, a summary investigation or board of inquiry would usually have been conducted in at least the following instances:

- (a) all the early instances relating to mistreatment of prisoners,
- (b) wounding of a Somali national by what was intended as a warning shot,
- (c) shooting of a Somali national at roadblock,
- (d) alleged theft of a revolver from a Somali national by a CF member,
- (e) shooting at the Bailey bridge,
- (f) allegation that a soldier sold a CF weapon to civilian,
- (g) injury to a child when CF vehicle allegedly ran over a hut, and
- (h) taking of funds from a Somali vehicle.³¹

Moreover, some of the cases involving potential criminal conduct may also have merited an MP investigation.

In most of these cases, MP investigations eventually occurred. However, the injury to the Somali national by what was intended as a warning shot and the shooting of a Somali citizen at a roadblock — both very serious incidents — were never investigated. The first investigation reports on the taking of the revolver, the alleged sale of CF property, and the injury to a child when a CAR vehicle allegedly ran over his hut were not filed until three to four months after the incidents.³²

The taking of funds from a Somali vehicle was not investigated until a year later. In this incident, Col Labb  , Commander of Canadian Joint Force Somalia, led a ‘house clearing’ operation.³³ He and others were driving from the Canadian compound in Mogadishu to the port.³⁴ On the way, Col Labb   spotted a vehicle with a gun mounted on it and ordered a search. After they had swept the premises near the vehicle and found no one and no other weapons, Col Labb   took some Somali money (worth less than a dollar in Canadian funds) from the vehicle. He distributed the money to those who were with him and to others at headquarters in Mogadishu.³⁵

This incident is noteworthy for two reasons. First, the incident took place in Mogadishu north, outside the legitimate area of Canadian operations. Second, it is apparent from the evidence that the money was taken in circumstances that may have violated the *National Defence Act* and the *Geneva Convention*.³⁶ Yet no investigation was conducted until a year later. An MP investigation was concluded within a week, and no charges were laid. The money in Col Labb  ’s possession was turned over to Military Police. The money given to others was not recovered. The delay in investigating this incident illustrates a systemic problem with the current military justice

system. Control of military investigations is concentrated in the hands of commanding officers who are responsible for operations and who may also be directly implicated in the incidents. As well, many of the cases that were not investigated immediately involved Somali victims. The military justice system simply may not have responded adequately when harm to civilians was involved.

Twenty incidents of accidental or negligent discharge of a personal weapon and two incidents of accidental or negligent discharge of crew-served weapons occurred in theatre.³⁷ One caused an injury and another killed a CF soldier. However, except for the discharge causing death, no summary investigations or investigations by Military Police took place. While each incident by itself may not call for a summary investigation, the frequency of these events surely demanded some investigation.³⁸

Problems in Carrying Out Investigations

Summary Investigations

Many summary investigations that were undertaken were incomplete or flawed. In some, CF guidelines were not followed. In others, witness statements should have been taken but were not, and in still other cases, those conducting or ordering the investigations had a conflict of interest.

Guidelines not followed

The summary investigation following the March 4th shooting most clearly illustrates the flaws with respect to controls governing summary investigations (see Chapter 38). Commanders are not obliged to follow the guidelines. However, the guidelines exist to help ensure that investigations are effective.

On March 5th, Col Labb   ordered LCol Mathieu to have the March 4th incident investigated.³⁹ That same day — March 5th — LCol Mathieu ordered Capt Hope, his intelligence officer, to carry out the investigation.

Several of the guidelines for summary investigations were not followed. For example, Capt Hope did not receive an appropriate briefing on the incident, nor was he freed from his regular duties to carry out the investigation.

Capt Hope had never conducted a summary investigation of an incident of such a serious nature. Yet with little guidance, Capt Hope was ordered to complete a very complicated investigation, potentially involving a conspiracy, within 24 hours. He received a short extension and completed his investigation on March 6, 1993. Much important information was omitted from the main text of Capt Hope's report, including Maj Armstrong's suggestion that the death was, in fact, murder. By his own admission, Capt Hope accepted without challenge the statements of those within his unit about

the incident. Capt Hope admitted in his testimony that, as a member of the unit, he had a clear conflict of interest and that this made it more difficult for him to question the word of his unit colleagues or his commanding officer, LCol Mathieu.

Col Labb   directed that the report be changed. He first asked that a significant phrase describing a controversial interpretation of the Rules of Engagement, which he had allegedly approved, be deleted. He then provided specific instructions for what should be added in order to provide more contextual information. Ultimately, he concluded that the report was "incomplete and in some places misleading" and resolved to write his own report.

Col Labb   sent his own report to NDHQ on March 23, 1993, but did not include Capt Hope's report, to which Maj Armstrong's statement that the victim had been "dispatched" was appended.⁴⁰ Capt Hope's report was forwarded to NDHQ only after JAG personnel reviewed Col Labb  's report, found it unsatisfactory, called for further investigation, and specifically requested Capt Hope's report. Shortly after, Military Police from NDHQ were given the permission and the resources to go to Somalia to investigate.

The problems in this investigation go far beyond a commanding officer's right not to follow established rules and guidelines and call into question the propriety of ordering a summary investigation as opposed to an in-depth police investigation. This investigation illustrates the attitude of superior officers that it was acceptable in the military culture for them to deviate from, or even ignore, rules and guidelines. It is also an example of the conflict of interest inherent in a system where the person responsible for upholding the military justice system is also accountable for the success of operations.

Witness statements not taken

As noted above, the summary investigation into the March 4th incident missed important witness statements. Several other investigations were also incomplete. Only four statements were taken in respect of the shooting death of one Somali and injury of two others at the Bailey bridge on February 17, 1993.⁴¹ None of the Somalis and few of the soldiers who were there were interviewed. The lack of attention to witness statements was especially surprising since the incident could have given rise to a claim against the Crown.⁴² The regulations require that such cases be carefully documented in order to be able to defend against any claims.⁴³

Conflict of interest

In at least four of the summary investigations ordered, conflicts of interest arose when those responsible for operations were also involved in investigating problems in the operation. These conflicts are inherent in the formal role

and responsibilities of a commanding officer. The conflict of interest can taint the appearance of fairness of the investigations and may affect their outcome as well.

In the first of the four cases, Col Labb  e's subordinate ordered and, more significantly, Col Labb  e approved, an investigation into a motor vehicle accident even though Col Labb  e had been a passenger in the vehicle and was therefore a witness.

The second case involved a much more serious incident — the shooting death of one Somali citizen and wounding of another on March 4, 1993. In this case, the Commander instructed the Commanding Officer to investigate problems in a patrol operation which the Commanding Officer had approved.

The third case also involved a serious incident — the death of Shidane Arone. In this incident, Maj Mackay, the acting Commanding Officer, ordered a summary investigation. He tasked Capt Gilligan of Service Commando, a junior officer, to investigate. Maj Seward, the Officer Commanding 2 Commando, and Capt Sox, the Officer Commanding 4 Platoon, whose members were responsible for guarding Mr. Arone that night, took statements from their fellow unit members for Capt Gilligan.

A fourth investigation involving a conflict of interest was the alleged theft of a sword from a Somali national by a member of 2 Commando. The deputy commander of 2 Commando was ordered to conduct a summary investigation. It concluded that the incident did not involve 2 Commando personnel. As later MP investigations found, the 2 Commando logs contradict the claim in the summary investigation report that there was no patrol in Belet Huen at the time of the incident.

Problems in Military Police Investigations

Military Police attempted to carry out their investigations professionally and adequately. Most of the individuals involved in the two most serious incidents — the shootings on March 4th and the death of Mr. Arone on March 16th — were identified by Military Police. Most of the evidence the Military Police collected appears to have met the standards of admissibility in the military justice system.

However, there were investigative shortcomings. Most stemmed from the systemic challenges faced by the Military Police. There were too few appropriately trained Military Police to carry out the investigations adequately, and many investigations were conducted long after the event and under tight deadlines. Sometimes no effort had been made to secure the crime scene. Above all, where there was a potential for a criminal charge, commanding officers were reluctant to call in Military Police to investigate.

Military Police also had problems conducting individual investigations, including a lack of co-operation from soldiers and officers, difficulty in investigating their superiors, limits imposed by commanding officers on investigations, and frustration of their investigations because of prior disciplinary investigations. Moreover, some of the investigations were incomplete in part because the choice of investigative tactics was sometimes governed by irrelevant considerations, and some individuals were inappropriately cautioned, thereby restricting the information that could be gathered. These issues are discussed in greater detail below.

Lack of co-operation with Military Police

The reluctance of commanding officers to call in Military Police for serious criminal investigations was symptomatic of the dismissive attitude of both senior officers and non-commissioned officers toward the Military Police. In three incidents in 2 Commando in the autumn of 1992, non-commissioned officers counselled soldiers not to co-operate with their own senior officers and MP investigators.⁴⁴ In several investigations within the CAR during the pre-deployment period, Military Police met a wall of silence that seriously hindered their investigations.⁴⁵ Military police investigating the March 4th incident also noted this as a problem in their investigation. Their report states:

Throughout the conduct of this investigation, there was an evident lack of cooperation and a reluctance on the part of most personnel to come forward, to provide information or to get involved in the inquiries. Regardless of the perceived status (suspect or source) of the personnel contacted by investigators, information had to be slowly and laboriously acquired from those personnel.⁴⁶

At least one MP investigating the March 4th incident felt that superior commanders went beyond simple lack of co-operation and actually interfered with the investigation.⁴⁷

Difficulty investigating superiors

Military Police are part of the chain of command. They take orders from their commanding officers about which incidents to investigate, and their chances for promotion are affected by their commanding officer's assessment of them. This makes it difficult for MP to treat their superiors as ordinary witnesses or suspects. If they had been asked to investigate LCol Mathieu's alleged statement, "Kill the bastards. I'll cover for you", the regimental MP who served as LCol Mathieu's bodyguards would no doubt have found it difficult to question him.⁴⁸

Gen Boyle was interviewed about his involvement in the alleged withholding, destruction or alteration of documents in the Directorate General Public Affairs after their release was sought under the Access to Information Act. Some aspects of the interview appeared to favour Gen Boyle. He was permitted legal counsel even though he was not a suspect and was also given, on request, a transcript of the interview. Neither of these was normal procedure. It was suggested during his testimony before us that this unusual treatment was accorded him because the non-commissioned MP who interviewed him may have been intimidated by his rank.⁴⁹ Gen Boyle agreed that it was possible that MP treated him differently than they might have treated other witnesses or potential suspects.⁵⁰

Influence of commanding officer on investigations

Military Police can undertake investigations of their own accord — at least in theory. However, commanding officers can exert tremendous influence over investigations because Military Police fall within the chain of command. That influence may be intentional or unintentional, but it can affect the scope of an investigation and the resources available to carry it out.

The potential for this kind of influence can exist in an investigation such as that of the death of Shidane Arone. The death of Mr. Arone was eventually treated as a potential murder case. Yet, there was ample reason to go beyond the criminal investigation and look into more systemic problems, such as the understanding of the Law of Armed Conflict and the treatment of detainees. However, a commanding officer might be tempted to hinder such a broad investigation if it might cast the commander, the commanding officer, the unit, or the CF in a bad light.

Perhaps the most striking example of command influence comes from the March 4th incident. Senior officers at NDHQ and in Somalia delayed the MP investigation of the incident for nearly six weeks, despite the obvious need for a thorough and immediate MP investigation.

Incomplete investigations

Additional Military Police did not arrive in Somalia until May 1993. When they did arrive they were required to investigate numerous incidents, many of which had happened months before, within a short time. Several investigations were therefore left incomplete.

In general, few attempts were made to obtain statements from Somali witnesses. For example, this was true of the incident involving the alleged injury of a child by a CAR vehicle and the investigation of the shooting at the Bailey bridge.⁵¹ This may be a systemic problem — the reluctance of organizations investigating their own potential misconduct to approach outside witnesses.

Later investigations, in 1994, also exhibited several deficiencies because they took place long after the incidents and under tight deadlines. In one investigation of the alleged mistreatment of detainees, no written statements were obtained from Col Labb  or from others who recalled seeing the detainees.⁵² Similarly, in the investigation of alleged orders to destroy photos of detainees, no written statements were obtained from the key witnesses.⁵³ The investigation of the taking of money from a Somali vehicle during a 'house clearing' operation was also not well documented.⁵⁴ Only one written statement was obtained, and that person was not a witness. No written statements were taken from those who had accompanied Col Labb  and witnessed his actions.

In other cases, the document record reveals that investigators reached conclusions prematurely. For example, the MP investigation into the shooting at the Bailey bridge concluded that the soldiers acted properly.⁵⁵ However, the investigation failed to clarify contradictions between the statements of the soldiers involved and statements contained in briefings about the incident to the Minister of National Defence. As well, significant questions about the incidents were left unanswered.⁵⁶

Inappropriate cautions

Soldiers were sometimes cautioned even though they were the only witnesses to an incident.⁵⁷ For example, everyone interviewed by MP about the March 4th incident was cautioned about the right to silence, thereby complicating the investigation.

Criminal investigations frustrated by investigations ordered by commanding officers for general disciplinary purposes

The criminal investigation of the theft of a sword from a Somali citizen was made more difficult because a summary investigation had already been held.⁵⁸ The summary investigation may have provided an opportunity for witnesses and suspects to rehearse their version of events.

We understand from our investigations that the officers in charge initially treated the March 16th incident as a general disciplinary problem. We also understand that no attempt was made to preserve the crime scene or evidence, that Shidane Arone's body was washed, and that MCpl Matchee's camera was not seized and retained, despite knowledge that photos had been taken and that MCpl Matchee was involved in the death. Moreover, we understand that MCpl Matchee's guards helped him dispose of potential evidence, perhaps unknowingly, by passing the camera ultimately to MCpl Matchee's friend, Cpl McKay. As well, it appears that no effort was made to preserve

the crime scene after the March 4th incident. In both the March 4th and the March 16th case, those who might have preserved the crime scenes may not have understood the importance of doing so.

Reporting of Investigations

These incidents highlight two problems in the reporting of investigations. The first is the alteration of reports. The second is inconsistency in reporting incidents.

Col Labb   asked for significant deletions in the summary investigation report of the March 4th incident before the report was sent to NDHQ. Eventually, the following statement was deleted: "The policy of shooting at Somalis inside or running away from CDN wire was formulated by LCol Mathieu... on 28 Jan 93 after consultations with, and approval of Comd CJFS, Col Serge Labb  ."⁵⁹

It also appears that there was no consistent procedure for forwarding investigation reports to NDHQ. In some cases, NDHQ was informed immediately after an incident occurred. In other cases, the information seemed to pass up the chain of command much more slowly. For example, the shooting of a Somali wielding a weapon was the subject of a Significant Incident Report (SIR).⁶⁰ A SIR was also filed about a Somali who was injured by a shooting at a roadblock.⁶¹ Although neither of these incidents was investigated, both were immediately reported and discussed at NDHQ. In the first case, the SIR was sent to the Chief of the Defence Staff for consideration by the Minister. The SIR for the second incident was sent the same day to NDHQ and discussed at daily executive meetings on January 29 and 30, 1993.

By contrast, Col Labb  's personal investigation report on the March 4th incident was not received at NDHQ until March 23rd. As well, the Minister claimed to know nothing of the circumstances of the death of Mr. Arone until March 23, 1993.

Similarly, there was a lack of written communication and detailed information on MCpl Matchee's apparent attempted suicide on March 19, 1993. There appears to have been an oral briefing in the Minister's office on the afternoon of March 19th, but no written communication to the Minister until March 26, 1993. The written communication appears to have been prompted by an inquiry from a member of Parliament. This was the first acknowledgement of a connection between this incident and Mr. Arone's death.

CONCERNS ABOUT THE RESPONSE TO FINDINGS OF MISCONDUCT

Even when investigators identified misconduct, military leaders did not always respond appropriately. It is not possible to discuss in detail all the problems associated with the application of the military justice system to the events in Somalia. However, the problems identified below typify the difficulties that permeate the system:

- (a) problems related to the deployment of legal officers,
- (b) problems related to deciding whether to respond to misconduct, and
- (c) problems related to actual or perceived bias.

Problems Related to the Deployment of Legal Officers

The Decision to Send Only One Legal Officer

As the only JAG legal officer sent to Somalia, Maj Philippe was expected to provide legal advice to the commander, the officers involved in misconduct, and the Military Police investigating the misconduct. This placed him in a position of clear conflict of interest that undermined the solicitor-client relationship.⁶² In attempting to avoid a conflict of interest, Maj Philippe had to refuse the request of his operational CO, Col Labbé, that Maj Philippe provide legal advice to others.

Lack of Clarity about Authority of Legal Officers

It was not clear under whose authority Maj Philippe was sent to Somalia. Confusion about the authority and roles of legal officers arose again when additional legal officers were sent to Somalia following the March 16th incident. Initial communications stated that legal officers were under the authority of the Deputy Chief of the Defence Staff, while later communications between NDHQ and CJFS Headquarters stated that they were under the authority of the JAG.⁶³

Reluctance to Use the Services of Legal Officers

The office of the JAG report, “Lessons Learned — OP Deliverance”, states that the most important lessons reaffirmed during Operation Deliverance were that the Legal Branch must participate in crisis management and that

legal officers must go with units and headquarters abroad.⁶⁴ The report emphasizes the value of having legal officers ‘on the ground’.

The lack of clarity about the role and authority of legal officers indicated that there was a failure to understand that there are many operational areas where legal issues may arise and that there were continuing concerns about legal officers participating effectively in operational aspects of the mission.⁶⁵

Commanding officers clearly need to consult with legal officers during operations.⁶⁶ Yet statements by Maj Philippe and other legal officers at CJFS show that their efforts to provide advice to CARBG on anything other than routine personnel or disciplinary problems were rebuffed.⁶⁷ Maj Philippe suspected that the March 4th shooting involved excessive and illegal use of force and said so.⁶⁸ Yet senior officers who lacked legal expertise did not involve Maj Philippe in their discussions about the incident or about the type of investigations warranted.⁶⁹

Problems Related to Deciding Whether to Respond to Misconduct

Commanding officers have significant discretion in deciding whether and how to respond to misconduct. They can ignore it or deal with it through informal, administrative or disciplinary sanctions.

The Decision to Prosecute

Annex B to this chapter (Disciplinary and Administrative Action Taken) outlines the action taken as a result of in-theatre and post-deployment misconduct. Charges were laid as a result of the torture and death of Shidane Arone. As well, soldiers and officers were charged for passing on orders that prisoners could be abused.⁷⁰

They were also charged for failing to issue instructions to subordinates to prevent the mistreatment of prisoners, ensure that a Somali prisoner was safeguarded, exercise command over their subordinates following the capture of Mr. Arone, and intervene in the mistreatment of the prisoner.⁷¹ There was also evidence in the courts martial that other soldiers knew of the torture but were not punished.

Several officers were convicted, but others who were in a position to promote discipline and the lawful conduct of operations escaped accountability. We can only wonder why they were not called to account for failing to intervene in these events. Indeed, we believe that the Code of Service Discipline and the Queen’s Regulations and Orders (QR&O) provide ample authority for holding officers accountable for neglecting to intervene to prevent misconduct by those under their command.

One case would seem initially to suggest that there is no general duty to intervene to prevent misconduct by others. In *R. v. Brocklebank*, the Court Martial Appeal Court found that Pte Brocklebank had not violated section 124 of the *National Defence Act*, which creates an offence for negligently performing a military duty imposed on the person.⁷² Pte Brocklebank had heard the beating of Shidane Arone on March 16th, but made no attempt to intervene. The Court found that Pte Brocklebank did not violate section 124, because no military duty had been imposed on him to protect Mr. Arone. The Court concluded further that a military duty under section 124 “will not arise absent an obligation created by statute, regulation, order from a superior or rule emanating from the government or Chief of Defence Staff.”⁷³

This judgement may absolve lower ranks of responsibility for failing to prevent harm to others when there is no specific military duty to intervene. However, it cannot be taken to absolve more senior ranks of responsibility under section 124 when confronted with misconduct by those under their command. The QR&O impose on all officers the general responsibility to enforce the *National Defence Act* and promote the “good discipline” of all subordinates.⁷⁴ Officers are also obliged to report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline when the officer cannot deal adequately with the matter.⁷⁵ Thus, officers have a clear military duty that makes them liable to prosecution under section 124 if they do not perform that duty.

In addition, the *National Defence Act* creates the offence of scandalous conduct by an officer, an offence that some might argue can be committed by failing to intervene when, for example, subordinates engage in reprehensible conduct.⁷⁶ One can also argue that neglect by an officer to intervene could be considered “neglect to the prejudice of good order and discipline”, also a service offence.⁷⁷

And all CF members, not merely officers, can be punished for behaving in a cruel or disgraceful manner — an offence that might be proved by showing that any CF member did not intervene to prevent or stop another member from harming someone.⁷⁸

Choice of Mechanism for Responding to Misconduct

In at least one situation, a career review board (CRB), an *in camera* process with no appeal mechanism, may have been used arbitrarily to penalize a soldier who spoke out about problems in the CF. Using this subterranean process rather than an open, formal process such as a court martial, undermined the appearance of fairness.

The case of Cpl Purnelle, one of the witnesses who testified before us, was especially troubling. In order to prevent any possibility of intimidation or harassment of Inquiry witnesses, we intervened repeatedly to ensure that Cpl Purnelle was treated fairly.

Cpl Purnelle was charged with eight counts related to conduct prejudicial to good order and discipline, and one count of disobeying an order of a superior.⁷⁹ The charges related to his criticisms of the CF in a book he wrote, subsequent media interviews, and his leaving his base to present evidence to us.⁸⁰ One charge related to a media interview for the program *Enjeux*, given in contravention of CF regulations prohibiting criticizing the CF in public or in the media. Cpl Purnelle alone was disciplined from among a group of soldiers interviewed for *Enjeux*.

On April 26, 1996, Cpl Purnelle was served with a counselling and probation report for publishing his book and making public comments.⁸¹ Cpl Purnelle also attracted censure after informing his commanding officer early in the morning of April 26, 1996, that he would be attending this Inquiry to give evidence about events in Somalia. One hour later, an oral order from this Inquiry was conveyed to Somalia Inquiry Liaison Team officials at DND, and a notice of this order was forwarded to the superior officer of the commanding officer. Later the same morning, Cpl Purnelle was arrested and detained for failing to attend as previously required at the offices of his commanding officer. To secure his appearance before us, we had to issue a written order requiring him to attend.

Initially, the charges against Cpl Purnelle were to be the focus of a court martial. NDHQ later decided to proceed with an *in camera* CRB. Then, in September 1996, the Commander Land Force Quebec Area agreed to dispose of the charges by the more open, transparent court martial process before convening the CRB. This decision to use the court martial first came after our correspondence with the Chief of the Defence Staff, the office of the JAG and members of Cpl Purnelle's CRB, and after meetings and correspondence with the Department of Justice.

In February 1997, Cpl Purnelle pleaded guilty to five charges. Two related to media interviews, two to his book, and one to leaving La Citadelle against an order to remain on premises. Another charge for leaving La Citadelle after being ordered to remain on premises was stayed. Cpl Purnelle was found not guilty on three charges relating to his media interviews, including his interview with the program *Enjeux*.

The Purnelle case highlights several problems in the military justice system.

- Guidelines to structure the commanding officer's powers to respond to alleged misconduct are lacking. This allows processes like the career review board to be used, if not abused, as a disciplinary measure. At

other times, measures such as reproofs were used to circumvent the disciplinary process altogether for senior ranks.

- The decision to convene a CRB shows how administrative processes can be used to impose severe sanctions, including release from the CF, without any of the important procedural safeguards available when other forms of discipline are applied. Convening a CRB in Cpl Purnelle's case gave the appearance, as we noted, that an attempt was being made to silence him by using a non-public administrative hearing instead of an open, formal process such as a general court martial.⁸² The fact that a CRB can recommend release from the CF would no doubt have a chilling effect on other soldiers who wished to express their concerns about problems in the CF.
- There is an appearance of command influence in the CF's response to Cpl Purnelle's misconduct. Cpl Purnelle was the only soldier singled out for discipline after several soldiers were interviewed for the television program *Enjeux*. Cpl Purnelle was a member of the 2nd Battalion, Royal 22^e Régiment, at CFB Valcartier, which at the time was under the command of MGen Dallaire, Commander Land Force Quebec Area. MGen Dallaire said on a radio program that any suggestion of an attempt to keep Cpl Purnelle from talking to this Inquiry was made up of "half truths, innuendo, overt errors, jumping to conclusions".⁸³ He made these remarks *before* the charges against Cpl Purnelle were disposed of. This immediately raises questions about the fairness of the disciplinary process against Cpl Purnelle, since some issues appeared to have been judged even before trial. Cpl Purnelle was eventually found not guilty for his appearance on *Enjeux*. However, the fact of being charged for that appearance and his conviction for leaving La Citadelle to come before us almost certainly discouraged public dissent by others.

Problems Related to Actual or Perceived Bias

Following the *Généreux* decision by the Supreme Court of Canada, the QR&O were amended to reduce the influence of the commanding officer over the decision to lay charges for service offences.⁸⁴ As well, the *National Defence Act* and the QR&O were amended so that, although a 'convening authority' can order a court martial and stipulate the kind of court martial to be held, the convening authority can no longer appoint its president and members.⁸⁵

However, the following examples show that the legislative changes may not have been sufficient to ensure independence and fairness. In practice, commanding officers can still participate in the decision to charge, even if they have been involved in the investigation or incident itself.

Potential for Bias

As Commanding Officer, LCol Mathieu signed the charge sheets for the first courts martial of Pte Brown, Pte Brocklebank, MCpl Matchee, and Sgt Boland, all of whom were charged in relation to the death of Shidane Arone.⁸⁶ LCol Mathieu initiated the court martial process by signing Pte Brown's charge sheet, referring the case to a higher authority and recommending a general court martial (GCM). He did this while under investigation himself as a result of certain orders he had given in Somalia, although at the time it was not certain whether these orders were directly connected to the events on March 16th.

The Judge Advocate of the GCM for Pte Brown concluded that LCol Mathieu's involvement raised a reasonable apprehension of bias, which tainted the convening process. The original charges laid were not affected, but all subsequent actions were nullified, and the case was sent back to the convening authority.

The Judge Advocate in the first court martial of Pte Brown stated that the commanding officer's role in signing the charge sheets must be executed "with quiet and impartial objectivity".⁸⁷ He noted that this was difficult to achieve because LCol Mathieu was himself the object of an investigation so related by "location, time, [and] general subject matter, with the same unit, having the same mission".⁸⁸ The Judge Advocate concluded that a very real possibility of perceived bias on the part of LCol Mathieu existed in that, no matter what course of action he took, he could be seen to have been motivated by self-interest.⁸⁹ The issue of bias was especially significant here because, as the Judge Advocate noted, the charges were serious and the potential consequences for the accused very grave.⁹⁰

A legal brief prepared by the office of the JAG noted that the possible impropriety of LCol Mathieu signing the charge sheets had been raised at least three times before the court martial of Pte Brown.⁹¹ In one instance, a legal officer advised the DCDS and the CDS in "the strongest possible terms" that LCol Mathieu should be removed from the process immediately.⁹²

At his appeal of conviction and sentence from his second court martial, Pte Brown argued again that the role of a commanding officer (in this case, LCol Chupick) in signing the charge sheet was quasi-judicial in nature, thus requiring actual and perceived impartiality. To the contrary, the Court Martial Appeal Court rejected Pte Brown's submission and found that the law does not require independence or impartiality:

[T]his submission is entirely without merit. It misapprehends the nature of the role of a commanding officer who signs a charge sheet and then refers the matter to higher authority. Contrary to the situation where the commanding officer decides himself to dispose of a matter summarily, there

is nothing judicial or quasi-judicial in the commanding officer's decision here. His function, like that of the convening authority to whom he refers the case, is wholly administrative in nature and there is no requirement that he act judicially.⁹³

Because LCol Chupick, not LCol Mathieu, signed the charge sheet for Pte Brown's second court martial, the concerns about bias that had been raised when LCol Mathieu signed the charge sheets for Pte Brown's first court martial were not present. Even so, characterizing the signing of the charge sheet as "administrative" from a legal standpoint does not address our concern about commanding officers being involved in the charging process for serious offences. Giving commanding officers the authority to sign charge sheets still enables conflicts of interest and bias to affect charges. This in turn damages the integrity of the military justice process.

Lack of Concern about the Appearance of Bias

JAG officers also had concerns about possible bias when MGen Vernon acted as convening authority in courts martial relating to the March 16th incident. According to the JAG officers, MGen Vernon had been involved in the cases before the courts martial and had made comments on issues relating to the charges. Nevertheless, as convening authority, he could dispose of the charges.⁹⁴

After the first GCM of Pte Brown, the office of the JAG stated that there was a strong argument for a reasonable apprehension of bias on the part of MGen Vernon as convening authority.⁹⁵ Correspondence from the office of the JAG identified multiple grounds for concern about his involvement as convening authority:

- (a) his participation in Commander's Council [Land Force Command] and discussions on:
 - (1) Somalia disciplinary cases — in particular these cases, and
 - (2) the de Faye Board of Inquiry;
- (b) his receipt and review of BGen Beno's paper, "The Way Ahead";
- (c) his public statement at a staff meeting in respect of the "search warrant" issue arising out of search of LCol Mathieu's property;
- (d) his responsibility to the Comd LFC, who has made several statements regarding alleged misconduct of members of CAR and the requirement for remedial action;
- (e) his personal visit to CAR in the attendant circumstances (indicating a continuing personal interest/responsibility for conduct of the unit);
- (f) his statement on CBC news, after Brown charges were referred back to him, that he was not biased (he protests too much);

- (g) his participation in the convening of courts martial in respect of these same charges earlier as Convening Authority and as a superior commander who supported the CO, LCol Mathieu; and
- (h) his role, as COS (Ops) at LFC, in the deployment of the CAR BG to Somalia.

In another memorandum, Capt Maybee of the JAG office noted that MGen Vernon would not likely transfer the Brown case to another convening authority, since MGen Vernon appeared to be “of the firm view that he is not biased”. Capt Maybee added that, “it is the opinion of this office that the Judge Advocate [in the first court martial of Pte Brown] avoided deciding this issue directly to save face for MGen Vernon.”⁹⁶

We share the concerns of the JAG officers. The apparent disregard within senior ranks of the potential for, and appearance of, bias calls into question the very integrity of the disciplinary process.

ISSUES ARISING IN INVESTIGATIONS AND PROSECUTIONS

Some incidents in Somalia should have been investigated but were not. Many of the investigations that did occur took place long after the incident, in some cases, well over a year later. The findings of at least one summary investigation were unreliable because the commanding officer ordering the investigation both approved the investigation report and witnessed the incident. Other investigations were left incomplete. Commanding officers sometimes used their authority over Military Police to limit their investigations. Reports and investigations were seriously delayed, and at least one report was altered in a substantial way by a superior officer.

Commanding officers exercised the discretion to apply administrative or disciplinary action and to lay charges according to inappropriate criteria. In several cases, commanding officers who may have been biased nonetheless continued to act. Problems of conflict of interest and bias were not rectified quickly or, in some cases, at all. Moreover, the office of the JAG was not consulted in cases where it should have been. The JAG legal officer himself encountered a conflict of interest when he was asked to advise people who were adverse in interest.

These problems relating to investigations and prosecutions have their roots, in part, in six related systemic problems that affect the military justice system as a whole:

- (a) command influence;
- (b) wide, unfettered discretion of commanding officers;
- (c) the lack of independence of the Military Police;
- (d) deficiencies in the organizational structure of the office of the JAG;
- (e) attitudes toward the lawful conduct of operations; and
- (f) the lack of distinction between disciplinary and criminal misconduct.

We discuss each of these underlying systemic problems in turn.

Command Influence

Command influence refers to the impact of the command structure on decisions that should be independent of command prerogatives and policy.⁹⁷ The power of commanding officers to limit the scope of an MP investigation, even if that power is not used, creates the appearance that command prerogatives do in fact influence what should be independent investigations. There need be no intention to subvert the military justice system. However, the result may be just that.

Command influence is inevitable in a military justice system where the commanding officer also makes the key decisions in disciplinary matters. Command influence is a significant obstacle to the necessary independence of various players in the military justice system.

Both actual and apparent command influence are problematic, since both justice and the perception of justice are vital — justice for those serving in the military, and a perception of justice for those serving in the military and for the public.

Wide, Unfettered Discretion of Commanding Officers

The substantial unstructured discretion vested in commanding officers has diminished the effectiveness and fairness of the military justice system. Leaving discretion to commanding officers — discretion over whether and how to investigate possible misconduct, and how to proceed if misconduct is uncovered — gives them the flexibility to apply appropriate measures to promote military discipline. At the same time, broad discretionary powers

can lead to arbitrariness, unjustifiably harsh treatment of some individuals, much too lenient treatment of others and, in some cases, the complete avoidance of accountability for misconduct.

Several studies suggest that higher ranking members enjoy preferential treatment in disciplinary matters. One report argues that significant numbers of CF members, especially those in the lower ranks, believe that the military justice system lacks fairness. Moreover, many junior non-commissioned members thought that the opinion of senior ranks was given disproportionate weight in complaints and grievances, particularly within units.⁹⁸ These issues are not unique to the CF. In some other jurisdictions, officers tend not to be prosecuted for actions that would lead to the prosecution of those of lower rank.⁹⁹

The commanding officer is not a peace officer, is not subject to a peace officer's oath of office or code of conduct, and has no overriding obligation to advance the administration of justice. In fact, the commanding officer's primary goal is to develop and maintain an effective and efficient unit. The commanding officer may also have less than laudable motives for applying discretion in one way or another. Disciplinary incidents within a unit may reflect poorly on the commanding officer's leadership ability. They may also limit future opportunities for the unit. The commanding officer may come to see his or her discretionary powers as a vehicle to soften the full impact of the military justice system or to manipulate the system for some personal goal.

Thus, the commanding officer may decide not to investigate a matter, or may refuse to take action, not because it serves the goals of the CF, but because it serves the commanding officer's more parochial interests. In other words, considerations that should not figure in the decision to investigate or prosecute — for example, the value of the offender to the unit and his or her personal history in the unit, the offender's rank, or the adverse impact of prosecution on subordinates who have become close comrades — can influence the commanding officer's use of discretion. And the exercise of that discretion occurs without political accountability or any form of public review.¹⁰⁰

In short, allowing commanding officers to bring inappropriate considerations into the exercise of their discretion damages the military justice system. This is among the most significant systemic issues revealed by our examination of the military justice system in relation to the Somalia deployment.

Later in this chapter we recommend how commanding officers can retain discretion within the military justice system where that discretion is necessary for the efficient functioning of the system. However, we also propose significant checks on the commanding officer's discretion in cases of "major disciplinary misconduct" and "criminal misconduct" (described in detail later), to prevent the type of abuses of the military justice system that occurred in Somalia.

Lack of Independence of the Military Police

Situating Military Police within the chain of command affects their ability to investigate misconduct.¹⁰¹ The problem is twofold. Organizationally, Military Police are subject to the orders of commanding officers; attitudinally, they see themselves as soldiers first, police officers second. This implies a loyalty to the military and a comradeship with the rank and file soldier. This 'soldier first' ethos may lead to overzealous pursuit of a matter by Military Police and the chain of command to salvage the reputation of a colleague, unit or the CF as a whole. In other cases, Military Police may not pursue a matter aggressively because the unit or colleagues in the unit would not be well served by a thorough investigation.

The attitude of Military Police, who see themselves as soldiers first, police officers second, can also influence the choice of investigative tactics. Such Military Police may be reluctant to use techniques such as informers or offers of immunity, techniques that might be seen as repugnant to the military ethos of comradeship, especially if used within one's own unit.

The soldier first ethos may also determine the information Military Police pass up the chain of command. Many Military Police and, more important, their non-MP superiors, appear to confuse loyalty to the military with loyalty to their officers, their chain of command, and the public reputation of the military.

In a routine civilian police investigation, the investigator is confronted with one and sometimes two objectives — identifying who committed the act and proving that the act constitutes a particular offence. To a large extent these objectives dictate the investigative methods used.

In the military context, Military Police also focus on identifying those who may have done something wrong. However, they pay less attention to proving that the act constitutes an offence. On a number of occasions, Military Police have said to us that their duty is to determine the facts and that it is for others to decide the implications of the facts.

Because of the civilian police focus on proving the commission of an offence, rates of crime solution and conviction are important. These rates are routinely used to audit efficiency and effectiveness. Among Military Police, case solving and conviction rates are not as important. They do not track rates of solving cases or measure their effectiveness in this way.¹⁰² Military police may never even learn the disposition of a case they have investigated.

The absence of such an orientation in MP investigations makes it more difficult for them to focus their investigations. It is also difficult for them to decide when an investigation is complete, since the goal of the investigation is not clear. Clear investigative goals would resolve both these problems.

Effectiveness and efficiency within the Military Police seem to be measured mainly by client satisfaction — the client being the commanding officer. However, the commanding officer usually has no expertise in law enforcement or criminal justice matters and may not be able to decide whether an investigation is adequate. Yet if the commanding officer requests nothing further from the Military Police, they consider the investigation complete — whether or not the case is ultimately solved or a successful prosecution occurs. In essence, Military Police investigate only to the point of satisfying the commanding officer. This poorly serves the needs of the military justice system, for the system in fact needs investigations that will support convictions, not simply satisfy commanding officers. At the same time, setting the commanding officer's satisfaction as the benchmark for deciding whether an investigation has been adequate fosters an environment ripe for command influence.

A good example of the inadequacy of present investigative goals can be seen in the MP security audit that occurred at the National Defence Operations Centre.¹⁰³ The investigation was deemed complete when the office that had initiated the investigation accepted the report as adequate. Yet we later learned that the investigation had overlooked several important leads.

Deficiencies in the Organizational Structure of the Office of the JAG

Unlike Military Police, the office of the JAG is theoretically independent of the chain of command. Nonetheless, the organizational structure and the operation of the office of the JAG exhibit several deficiencies.

- As advisers to DND and the CF, JAG officers participate in meetings of senior leaders in NDHQ who direct departmental policy.¹⁰⁴ JAG officers become involved in discussions on operational matters and provide legal advice about them. However, these discussions can bring the JAG's role as an independent judicial entity into conflict with its legal advisory role. For example, the JAG was to sit on an ad hoc committee to develop an action plan to respond to concerns about DND's response to the events in Somalia.¹⁰⁵ At the same time, the JAG was superintending the courts martial of several CF members being tried in relation to these events. In addition, the JAG may feel pressure, as part of a team of senior leaders at NDHQ, to conform to command or political decisions taken by the team.

- Within the chain of command, the independence of the office of the JAG and the importance of that independence are not well understood. For example, Col Labb   appeared to think that Maj Philippe, a JAG legal officer, was working for him. Similarly, when additional legal officers were eventually sent to Somalia, there was confusion about who directed their work.
- The JAG has always been chosen from within the military, although this is not required by law. Although the JAG is outside the chain of command, he or she may very well be unduly susceptible, albeit unknowingly and unwittingly, to the culture of hierarchy. The JAG takes instruction on judicial/legal matters. Although the JAG is not in the chain of command, as a military officer, the JAG is vulnerable to command influence by senior military officers. In at least one instance before us, a superior officer gave instructions to the JAG relating to the JAG's judicial functions. A note from the VCDS to the CDS stated that he had "instructed" the JAG to refuse a request to transfer Pte Brown's trial to civilian court.¹⁰⁶ JAG legal officers may also be susceptible to the culture of hierarchy, and thus may be less than objective when giving legal advice.
- The independence of the JAG may be compromised by overlapping roles. A JAG office memorandum about a possible retrial discusses the principles to be applied in the exercise of prosecutorial discretion: a reasonable prospect of successful prosecution, sufficient information, and the interests of justice being served.¹⁰⁷ However, the writer notes the importance of political and societal factors, including "the perception of how the CF is managed or mismanaged as a result of the decision to proceed or not proceed with the new trial."

This example highlights one problem flowing from the JAG's overlapping roles. While this advice may be appropriate for the JAG to give as a legal adviser, acting as adviser may appear to taint other functions of the office of the JAG, particularly the judicial function.

Attitude toward the Lawful Conduct of Operations

Senior officers in Somalia appeared to act as if the rules governing the conduct of CF members were different in Somalia than on other CF operations. There appeared to be little concern to ensure the lawful conduct of operations. Investigations were not held when they should have been. Leaders counselled their subordinates not to co-operate with Military Police. Basic principles, such as avoiding conflicts of interest, were not sufficiently respected in the charging and prosecutions process. Mistreatment of detainees continued throughout the deployment, even after it was forbidden verbally by the commander.

If some of the early disciplinary incidents we examined had been investigated thoroughly and expeditiously, legal advice sought and followed, and appropriate charges laid, the tone set for the Somalia operation would have been much more conducive to effective discipline. It would have promoted respect for the law. Subsequent, and much more serious, incidents might have been prevented.

Lack of Distinction Between Disciplinary and Criminal Misconduct

The current characterization of all misconduct under the Code of Service Discipline as a service offence carrying a possibility of detention or imprisonment also has an impact on investigations by Military Police. Each investigation is undertaken to meet the standard of proof (proof beyond reasonable doubt) required for a criminal trial, with the full panoply of Charter rights at the investigative stage. However, the great majority of misconduct could be dealt with by tribunals with reduced standards of proof. This would streamline the military justice process greatly, with no loss of rights in the serious cases where rights are most critical. It would be consistent with the standards of other federal employment legislation to permit an investigator appointed by the commanding officer or an MP to order a soldier to provide a statement, so long as no possibility of detention or imprisonment would attach to the misconduct.

RECOMMENDATIONS

A Restructured Military Justice System

This chapter highlights many of the deficiencies, theoretical and practical, of the current military justice system. The problems we uncovered are serious and significant. They cannot be addressed through simple cosmetic changes in the military justice system.

In this section we focus on the underlying philosophy of a restructured military justice system that will address many of the problems that have plagued the system, together with the general attributes of a system built on this philosophy.

Underlying Philosophy of the System

With few exceptions, CF members are Canadian citizens. As a basic rule, laws and procedures governing their conduct should be the same as those for other citizens. There is no inherent need for Canadians who happen to be soldiers to be treated differently from those who are not. Indeed, it is on the basis of equality before and under the law that France has abolished the use of military justice tribunals in peacetime. The Canadian military justice system should therefore parallel the civilian justice system unless there is clear justification for it to differ from the civilian system.

Justification for a different system can in fact be found in the goals of military justice, which reach significantly beyond those of civilian criminal justice. As with the civilian criminal justice system, the military justice system must seek to ensure public safety and the observance of important societal standards. CF members, like any other citizens, are subject to the criminal and other federal laws that apply to Canada's civilians. The procedures and safeguards of the military justice system must, in this respect, meet the standards of civilian justice. Otherwise, a soldier's right to equality before and under the law is compromised.

However, the military justice system is also designed to promote strict discipline, efficiency and high morale in the forces in order to achieve the military mission. As Chief Justice Lamer explained in *R. v. Généreux*:

The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security. To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. As a result, the military has its own Code of Service Discipline to allow it to meet its particular disciplinary needs. In addition, special service tribunals, rather than the ordinary courts, have been given jurisdiction to punish breaches of the Code of Service Discipline. Recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. There is thus a need for separate tribunals to enforce special disciplinary standards in the military.¹⁰⁸

The military must be prepared on short notice to perform a demanding and dangerous task. Strict discipline is an essential tool for ensuring this preparedness.

The peculiar nature of the military justice system, as opposed to the civilian system, can be seen from two examples — the first dealing with rules, the second with procedures for enforcing those rules.

- Obedience to lawful commands is central to effective military operations. Showing cowardice in the face of the enemy is a serious offence under the Code of Service Discipline. There is no counterpart for this offence in civilian life, simply because civilian life is not premised on the need for unswerving obedience to a higher authority.
- Misconduct must be responded to quickly to preserve discipline in the military. The structure, operation and limits of the military justice system should all be designed to achieve the basic goals of military justice — discipline, efficiency and high morale — in order to achieve the mission in a way that is fair and seen to be fair. At the same time, the military justice system must protect the same core values as those protected by the civilian justice system.

The Workings of a Restructured Military Justice System

Reclassifying Misconduct

Part V of the *National Defence Act* creates a category of misconduct called a “service offence”.¹⁰⁹ A service offence is defined as an offence under the act, the *Criminal Code* or any other act of Parliament, committed by a member subject to the Code of Service Discipline.¹¹⁰ Some service offences are not criminal or otherwise punishable in civilian life — for example, desertion, talking back to a superior, or showing cowardice before the enemy.¹¹¹

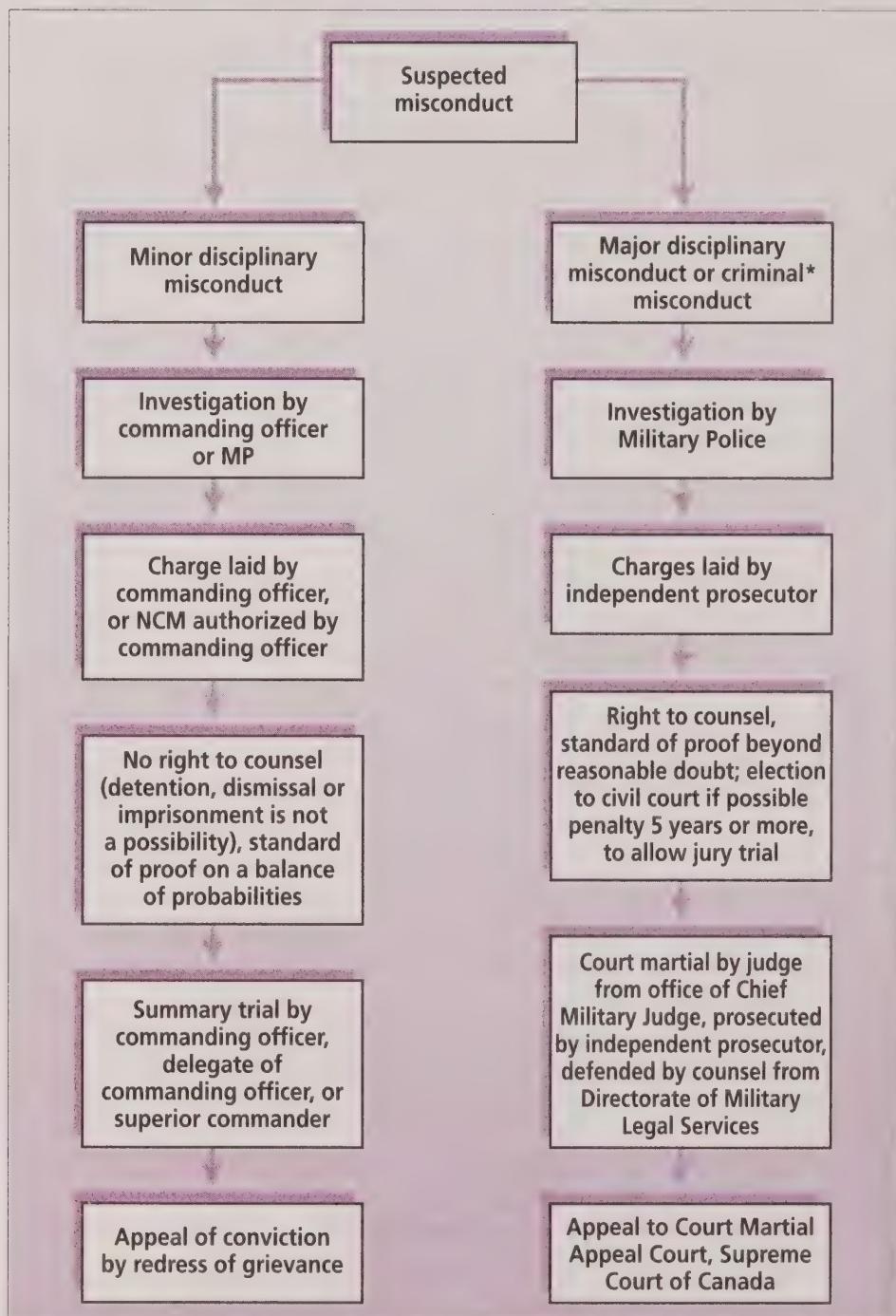
All service offences, no matter how minor, are now punishable by up to two years' imprisonment if tried by court martial. Because of the possibility of a substantial term of imprisonment, appropriate cautions must be given to a suspect in every case, often to the prejudice of the efficient resolution of an investigation of a relatively minor incident.

Sharper lines need to be drawn between the disciplinary and criminal kinds of misconduct that are now covered by the Code of Service Discipline, and appropriate investigative and trial procedures need to be established for each type. It is not necessary to create new forms of misconduct. The Code of Service Discipline contains ample provisions to satisfy the legitimate disciplinary needs of the military, but the misconduct identified in the Code should be reclassified, and distinct investigative, prosecutorial and trial procedures should apply according to the classification (see Figure 40.1).

In a restructured military justice system, the investigative, prosecutorial and adjudicative role of the commanding officer should be recognized and acknowledged as necessary for proper control of conduct defined as 'minor disciplinary misconduct'. Leaving discretion to commanding officers to control investigations and responses to minor disciplinary misconduct gives them the flexibility to apply appropriate measures to promote military discipline, efficiency and high morale. Under a system of reclassified misconduct, however, the commanding officer could use those powers only to investigate, try and punish minor disciplinary misconduct. By definition, such minor disciplinary misconduct could not be punishable by detention, dismissal or imprisonment. It also would not include what are now considered among the most serious service offences — those listed in QR&O 108.31(2).¹¹² By definition, major disciplinary misconduct would include some of the service offences listed in QR&O 108.31(2), such as desertion and traitorous utterances.

Prosecution or dismissal of a charge of minor disciplinary misconduct should no longer be able to block criminal prosecution for the same misconduct. In this sense, the disciplinary powers of the commanding officer would be akin to those afforded professional bodies such as provincial law societies and colleges of physicians and surgeons. Action by those bodies against individual misconduct does not preclude subsequent criminal prosecution for the same conduct. Nor would criminal prosecution prevent the professional body (or the commanding officer, in the case of the CF) from proceeding against the individual through the minor disciplinary process.

Figure 40.1
Proposed Reclassification of Misconduct
and Related Investigative and Trial Procedures



* Some serious criminal misconduct will be investigated by civilian police and tried in civilian court, if the misconduct occurred in Canada (*National Defence Act*, section 70)

Recommendation

We recommend that:

- 40.1 The National Defence Act be amended to provide for a restructured military justice system, establishing three classes of misconduct:**
- (a) Minor disciplinary:** Any misconduct considered minor enough not to warrant detention, dismissal or imprisonment should be considered minor disciplinary misconduct. Examples might include a failure to salute and quarrelling with another Canadian Forces member. Minor disciplinary misconduct would not include service offences now listed in the *Queen's Regulations and Orders* (QR&O) 108.31(2);
 - (b) Major disciplinary:** Any misconduct considered serious enough to warrant detention, dismissal or imprisonment should be considered major disciplinary misconduct triable only by court martial. This would include infractions such as some of those listed in QR&O 108.31(2). Examples might include being drunk while on sentry duty during a time of war, insubordination, and showing cowardice before the enemy. Major disciplinary misconduct would not include crimes under the *Criminal Code* or other federal statutes; and
 - (c) Criminal misconduct:** Any misconduct that would constitute a crime and is to be the subject of a charge under the *Criminal Code* or other federal statute or under foreign law and triable only by court martial or a civil court.

In most cases,¹¹³ the distinction between minor and major disciplinary misconduct would depend on the type of punishment associated with the misconduct. The commanding officer, on learning of alleged misconduct, would determine whether it should be punishable by detention or imprisonment. If the commanding officer decided that detention or imprisonment would not be appropriate, he or she could try the alleged misconduct under summary procedures similar to those now available to the commanding officer to try service offences. However, if the commanding officer thought that the alleged misconduct should render an offender liable to detention or imprisonment, the misconduct would be dealt with as major disciplinary misconduct, and

a much more independent investigative, charging and trial process would apply. Any alleged criminal misconduct would have to be dealt with through that same more independent investigative, charging and trial process.

Confinement to barracks would not be considered imprisonment or detention for the purposes of this misconduct classification scheme. Thus, minor disciplinary misconduct could be punished by confinement to barracks. Some might argue that allowing a penalty of confinement to barracks might violate Charter guarantees of fair legal process, since proceedings for minor disciplinary misconduct would offer no right to counsel and no right of silence. However, even if a *prima facie* violation of the Charter, the procedures applying to minor disciplinary misconduct would likely be saved by section 1 of the Charter. Section 1 would allow for a recognition of the very great importance of dealing with military discipline expeditiously to ensure safety and effective military operations.

This system of classification of misconduct still leaves the commanding officer with sufficient authority to handle the vast majority of disciplinary misconduct within the military, since most disciplinary misconduct is in fact minor. Yet it removes from the commanding officer control over the investigation, charging and prosecution, and trial of major disciplinary and criminal misconduct. Thus, the system is sufficiently flexible where it needs to be, and sufficiently independent where the dictates of justice demand.

40.2 To prevent abuse of the commanding officer's discretion to determine into which class the misconduct falls, there be formalized safeguards, provided for in the *National Defence Act* and regulations, including the possibility of independent military investigations into the misconduct, the authority of an independent military prosecutor to lay a charge for criminal misconduct arising out of the same incident, and the oversight performed by an independent Inspector General.

These proposed checks on the commanding officer's discretion are discussed in detail later in this section.

In the next few pages we set out recommendations for changes to the military justice system based on this classification of misconduct. We discuss investigative powers, the power to charge and prosecute, adjudication, and appeals. We also identify other changes to current military justice structures that are necessary to remedy the deficiencies identified during the course of this Inquiry.

Making Complaints about Misconduct

The QR&O require all members of the CF — officers and non-commissioned members — to report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline.¹¹⁴ This rule is justified by the nature of the military institution and should not change.

40.3 The National Defence Act be amended to provide clearly that any individual in the Canadian Forces or any civilian can lay a complaint with Military Police without fear of reprisal and without having first to raise the complaint with the chain of command.

Still, there may be reluctance to report misconduct for fear of reprisals — and with very good reason, as we have unfortunately discovered. If Military Police become more independent of the commanding officer's influence, CF members will be more likely to report misconduct to them. (We discuss ways to enhance the independence of Military Police below.) Later in this section we also discuss how an independent Inspector General can protect CF members from reprisals for reporting misconduct.

Investigating Possible Misconduct

This chapter has identified several deficiencies relating to the investigation of misconduct in the CF. Among those deficiencies are the influence of commanding officers on the conduct of investigations, conflicts of interest arising from the chain of command investigating its own operations, a lack of respect for the lawful conduct of operations and for the role of the Military Police, competing loyalties within the Military Police and the lack of MP resources to investigate adequately.

Despite the deficiencies we have noted, there appears to remain a need for a commanding officer to have the discretion to decide whether to have an incident involving possible misconduct investigated by a formal board of inquiry, a less formal summary investigation, or an MP investigation.

We did not have an opportunity to examine in depth the applicable regulations and guidelines about boards of inquiry. However, we noted that the board of inquiry investigating the CF deployment to Somalia included at least one member who had been involved in important staff functions related to the deployment. This raised the possibility, or at least the appearance, of conflict of interest or bias. Orders regarding selection of members should be examined with a view to precluding such a possibility in future.

As to summary investigations, we think that the discretion of a commanding officer to order a summary investigation “in any manner he sees fit” is too broad. It ought to be circumscribed to ensure that all investigations comply with the guidelines on the use and conduct of summary investigations found in CFAO 21-9.

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- 40.4** *The Queen’s Regulations and Orders* should be amended to circumscribe the discretion of a commanding officer with respect to the manner of conducting summary investigations to ensure that these investigations are conducted according to the guidelines in Canadian Forces Administrative Order 21-9, dealing with general instructions for boards of inquiry and summary investigations.
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Further, we think that the guidelines should be strengthened to ensure that summary investigations are more effective and used appropriately.

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- 40.5** The guidelines in Canadian Forces Administrative Order 21-9 be amended to provide that
- (a) summary investigations be restricted to investigation of minor disciplinary misconduct or administrative matters;
 - (b) those conducting summary investigations have some minimum training standard in investigations, rules of evidence, and the recognition of potential criminality;
 - (c) those conducting summary investigations have a specific duty to report matters of potential criminality directly to Military Police; and
 - (d) those conducting summary investigations be free from any conflict of interest.
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The following recommendations seek to address the deficiencies of MP investigations specifically.

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- 40.6** Military Police be independent of the chain of command when investigating major disciplinary and criminal misconduct.
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On too many occasions, we have seen the results of a lack of independence of Military Police from the chain of command. Important investigations that should have been conducted were not. Those that were conducted were sometimes delayed — at the instance of superiors — and carried out with inadequate resources. Because of their position in the chain of command, Military Police may have felt intimidated when investigating senior officers.

To ensure that Military Police can perform their functions without undue influence by those higher in the chain of command, it is essential that they be independent when investigating major disciplinary and criminal misconduct. However, Military Police who are attached to units or elements of the CF should remain under the command of their commanding officers for all purposes except for the investigation of major disciplinary or criminal misconduct. They would continue to perform tasks such as traffic control, the handling of prisoners of war and refugees, and the investigation of minor misconduct. They could also be assigned other duties by their commanding officer and would continue to serve the needs of the commanding officer.¹¹⁵

40.7 Military Police be trained more thoroughly in police investigative techniques.

40.8 All Military Police, regardless of their specific assignment, be authorized to investigate suspected misconduct of their own accord unless another Military Police investigation is under way.

40.9 Control of the conduct of Military Police investigations of major disciplinary and criminal misconduct be removed from the possible influence of the commanding officer or the commanding officer's superiors. Military Police attached to units or elements of the Canadian Forces should refer major disciplinary and criminal misconduct to the Director of Military Police through dedicated Military Police channels.

The Director of Military Police would be a new position. Military Police responsible for investigating major disciplinary and criminal misconduct would thus be as far removed from the influence of commanding officers as possible. This would enhance police independence, although total independence can never be guaranteed as long as Military Police are members of the CF; they will always face a subtle pressure to consider the impact of an investigation on the CF.

40.10 The Director of Military Police should oversee all Military Police investigations of major disciplinary and criminal misconduct and report on these matters to the Solicitor General of Canada.

This would be an unusual reporting relationship, since those responsible for a specific function within the military — the investigation of major disciplinary and criminal misconduct — would not report to the Minister of National Defence in respect of that function. However, it is critical that the military justice system avoid the serious problems of command influence and conflict of interest that have plagued it under the current reporting relationship. Reporting to the Solicitor General would avoid both these pitfalls.

The added independence of this reporting arrangement would allow Military Police to conduct even those investigations that might reflect badly on the unit being investigated, or on the unit's commanding officer.

We recommend reporting to the Solicitor General of Canada because of the Solicitor General's experience in dealing with police matters. The Solicitor General's responsibilities now include the RCMP, and it would not represent a major shift in emphasis within the department to handle military policing matters.

40.11 The Director of Military Police be responsible and accountable to the Chief of the Defence Staff for all Military Police purposes, except for the investigation of major disciplinary or criminal misconduct.

40.12 Commanding officers have the power to request Military Police to investigate any misconduct, but commanding officers have no power to control the method of the investigation or limit the resources available to Military Police conducting investigations.

Controlling the resources available to Military Police is one effective means to limit their investigative capabilities. To ensure that commanding officers cannot use the allocation of resources to influence MP investigations, commanding officers should have no role in allocating resources to such investigations.

40.13 The Director of Military Police and all Military Police under the command of the Director have a system of ranking different from the general Canadian Forces system, so that Military Police are not seen or treated as subordinate to those they are investigating.

In an environment where there are two classes within the military — officers and rank and file — and the danger of conflicts of interest is ever present, it is essential that Military Police have absolute confidence in the authority of the Director of Military Police to protect their interests. As well, they must not feel intimidated by the rank of those they are investigating. A separate rank structure for Military Police will help to accomplish this.

40.14 Professional police standards and codes of conduct be developed for Military Police.

Military police are bound by the same regulations and norms of conduct that apply to all soldiers. Yet, because of their position of trust, Military Police must have ethics and standards of professionalism that differ from, and in some ways exceed, those expected of a Canadian soldier. Every police agency requires a system of enforcing these standards to protect individuals from an abuse of police powers and ensure the accountability of the police, while at the same time preserving the requisite degree of independence the agency needs to secure the trust of the public.

40.15 To give effect to these new policing arrangements, Military Police be given adequate resources and training to allow them to perform their tasks.

The importance of Military Police in any operation should be recognized more fully and provided for explicitly in the composition of forces. Furthermore, Military Police must receive training adequate to the policing tasks they are required to perform. This may mean specific investigative training programs, secondments to civilian police forces, or co-operative agreements with more specialized civilian police agencies.

40.16 Adequate numbers of appropriately trained Military Police accompany Canadian Forces deployments.

A frequent theme throughout this chapter has been the need for adequate investigative capacity. Only two Military Police were deployed to Somalia with the CARBG — too few to do even the simplest of investigations. Those who were deployed were not sufficiently trained to perform the sophisticated investigations required in Somalia.

Reporting the Results of Investigations

40.17 In general, the results of investigations into all types of misconduct — minor disciplinary, major disciplinary or criminal — be reported to the commanding officer of the unit or element to which the Canadian Forces member concerned belongs.

As explained below, the commanding officer would have no control over the charging process for major disciplinary or criminal misconduct. The results of the investigation would be reported to the commanding officer only to allow the commanding officer to stay abreast of discipline problems within the unit. A commanding officer who learns of misconduct by a subordinate would also, of course, be free to treat the misconduct as minor and proceed by way of summary trial. However, this would not preclude an independent criminal prosecution for the same misconduct.

40.18 Results of investigations of major disciplinary and criminal misconduct be reported to an independent prosecuting authority under the direction of the Director General of Military Legal Services.

Charges

At present, commanding officers do not have the legal authority to lay charges for service offences. Charges can be laid only by an officer or non-commissioned member authorized by the commanding officer to lay charges.¹¹⁶ However, in practice, through their influence over the subordinates vested with charging powers, commanding officers can exert significant control over the decision to charge.

Commanding officers are not well placed to be involved in the decision to charge for major disciplinary and criminal misconduct because of the potential for improper influences, such as bias or conflict of interest, to affect the decision. Removing, to the extent possible, control by the commanding officer over the decision to charge for major disciplinary and criminal misconduct would help eliminate these improper influences from the charging process.

40.19 Control of the decision to charge for major disciplinary or criminal misconduct be removed from the commanding officer and vested in an independent prosecuting authority.

40.20 The commanding officer have the right to lay charges for minor disciplinary misconduct.

Since a conviction for minor disciplinary misconduct would not carry a possibility of detention or imprisonment, the requirements for procedural fairness need not be as strict as for other forms of misconduct. As well, the additional checks on improper use of discretion that we recommend — the creation of an independent military prosecutor and the office of the Inspector General, for example — should reduce the likelihood that commanding officers would abuse any discretion vested in them to charge for minor disciplinary misconduct.

In a civilian setting, the charging decision is usually left to police. However, in some civilian jurisdictions, police lay charges only after the charges have been screened by a lawyer prosecutor.

For three reasons, we believe it appropriate for an independent prosecuting authority to lay charges for major disciplinary and criminal misconduct:

1. There is no tradition of police independence in the military. Thus, the argument against charges being laid by the prosecutor as an interference with police independence has no application in the military setting. Certainly, there is no reason to think that having the prosecutor lay charges in the military setting would raise constitutional issues.
2. There is no reason to believe that Military Police would be in a better position than a legally trained military prosecuting authority to assess the needs of the military community.

3. The administrative advantages of having the prosecutor lay charges are likely to be greater in the military than in the civilian setting. Military police have no existing role in the charging process and, therefore, no expertise in drafting charges. Military prosecutors would have the legal training necessary to determine whether charges were well founded.
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40.21 An independent prosecuting authority decide whether to lay charges for major disciplinary and criminal misconduct and have the responsibility for laying charges.

40.22 The prosecuting authority be independent in determining whether to charge and prosecute. However, guidelines should be developed to assist in the exercise of prosecutorial discretion.

The guidelines would ensure that prosecutions are mounted on a proper evidentiary footing and that the public interest, including the public interest in a well disciplined and effective military, is respected. A starting point for such guidelines would be the existing federal Crown Counsel Policy Manual, which sets out guidelines for federal prosecutors.¹¹⁷

40.23 Military Police serve as advisers to the independent prosecuting authority, but have no authority themselves to lay charges.

40.24 Commanding officers have no authority to dismiss charges laid by the independent military prosecutor.

Restricting the authority of the commanding officer to dismiss charges would prevent the commanding officer from circumventing the trial process. At present, a commanding officer can simply dismiss a charge, thus enabling the accused to assert the rule against double jeopardy.

Using an independent military prosecutor to decide whether to lay charges for major disciplinary and criminal misconduct would address two main deficiencies within the current military justice system.

- It would restrict the control of the process by commanding officers, a control that has been used in the past to trivialize misconduct; at the same time, it would allow commanding officers control over the

- investigation and prosecution of minor disciplinary misconduct, a control that is necessary for the efficient functioning of the military.
- It would prevent commanding officers from choosing a relatively gentle military justice process for dealing with misconduct, then relying on the doctrine of double jeopardy to prevent further disciplinary action and the imposition of more appropriate, and more severe, penalties.

40.25 The independent military prosecutor have authority to lay charges for minor disciplinary offences when the prosecutor deems it useful to prosecute multiple acts of misconduct, including minor disciplinary misconduct, at the same trial.

The independent military prosecutor would normally not prosecute minor disciplinary misconduct. Such misconduct would normally be handled by the commanding officer. However, if an individual faced multiple charges for both minor and major disciplinary or criminal misconduct, the independent military prosecutor should be permitted to prosecute all charges together.

Trial of Charges

40.26 An accused person have a right to counsel when prosecuted for major disciplinary or criminal misconduct.

40.27 The standard of proof at a trial for major disciplinary or criminal misconduct be proof beyond a reasonable doubt.

40.28 There be no right to counsel in respect of minor disciplinary misconduct, since detention or imprisonment would not be a possibility, but the right to counsel may be permitted at the discretion of the commanding officer.

40.29 The standard of proof at a trial of minor disciplinary misconduct be proof on a balance of probabilities. An accused person may be compelled to testify at a trial of minor disciplinary misconduct.

Summary proceedings for minor disciplinary misconduct could not result in detention or imprisonment. Requiring a CF member to respond to a charge of minor misconduct would increase the efficiency of the process, yet there would be no real hardship caused by not allowing a right to silence. Minor disciplinary proceedings would be less like criminal proceedings, and somewhat more like administrative proceedings where a right to silence would not be expected.

40.30 Accused persons charged with misconduct carrying a possible penalty of five years' imprisonment or more should have the right to elect trial by jury before a civilian court.

Section 11(f) of the Charter allows a jury trial of any offence carrying a penalty of five years or more. Military trials, however, are exempt from this Charter guarantee. Our proposal would promote equality before and under the law.

Punishments

At present, the punishments available after summary trial are limited and do not take into account advances in sentencing programs in civilian society.

40.31 Punishments such as fine options, community service and conditional sentences, which have been made available in the civilian criminal process, be available within the military for minor and major disciplinary and criminal misconduct.

Thus, fine option programs, conditional sentences, and conditional and absolute discharges should all be available to judges or commanding officers trying misconduct cases, except that no minor disciplinary misconduct could result in detention or imprisonment. A CF member convicted of a criminal offence by a civilian court, but not when convicted by a service tribunal, has access to the full panoply of punishments that would apply to a civilian convicted at a criminal trial.

Appeal Mechanisms

40.32 Formal rules be established to permit appeals of summary trials of minor disciplinary misconduct by way of redress of grievance.

At present, the redress of grievance procedure is sometimes used as a means of appealing a conviction at a summary trial. However, there is no formal legal authority setting out the availability of redress of grievance as a means of appeal. Such authority should be set out in the QR&O.

40.33 All Canadian Forces members convicted at summary trials be served with a notice stating that an application for redress of grievance is available to appeal their conviction.

Some CF members simply do not know that they have the right to have a conviction reviewed. This recommendation attempts to fill this gap.

40.34 The Queen's Regulations and Orders be amended so that the Minister of National Defence has no adjudicative role in redress of grievance matters.

At present, redress of grievance procedures can be taken, in successive steps, all the way to the Minister of National Defence. It is not appropriate, or necessary, for the minister to perform this quasi-judicial function. The minister should have no role in minor disciplinary matters, including redress of grievance. A person relying on an application for redress of grievance in appealing a conviction for minor disciplinary misconduct or sentence can have the application reviewed by at least two, and possibly three, levels of authority before the application reaches the minister. At each level of appeal, the authority has the power to alter the conviction or sentence.¹¹⁸ There is no practical need for the additional level of appeal to the minister.

Nor should the minister be involved in reconsidering the legality of convictions and fitness of sentences for major disciplinary and criminal misconduct. The minister's involvement in these matters is a vestige of an era when there was no right of appeal to the courts. This era has now passed, and adequate rights of appeal do exist.

Appeals of trials of major disciplinary and criminal misconduct should continue to be handled by the Court Martial Appeal Court and, ultimately, by the Supreme Court of Canada.

Reforming and Replacing Military Justice Institutions

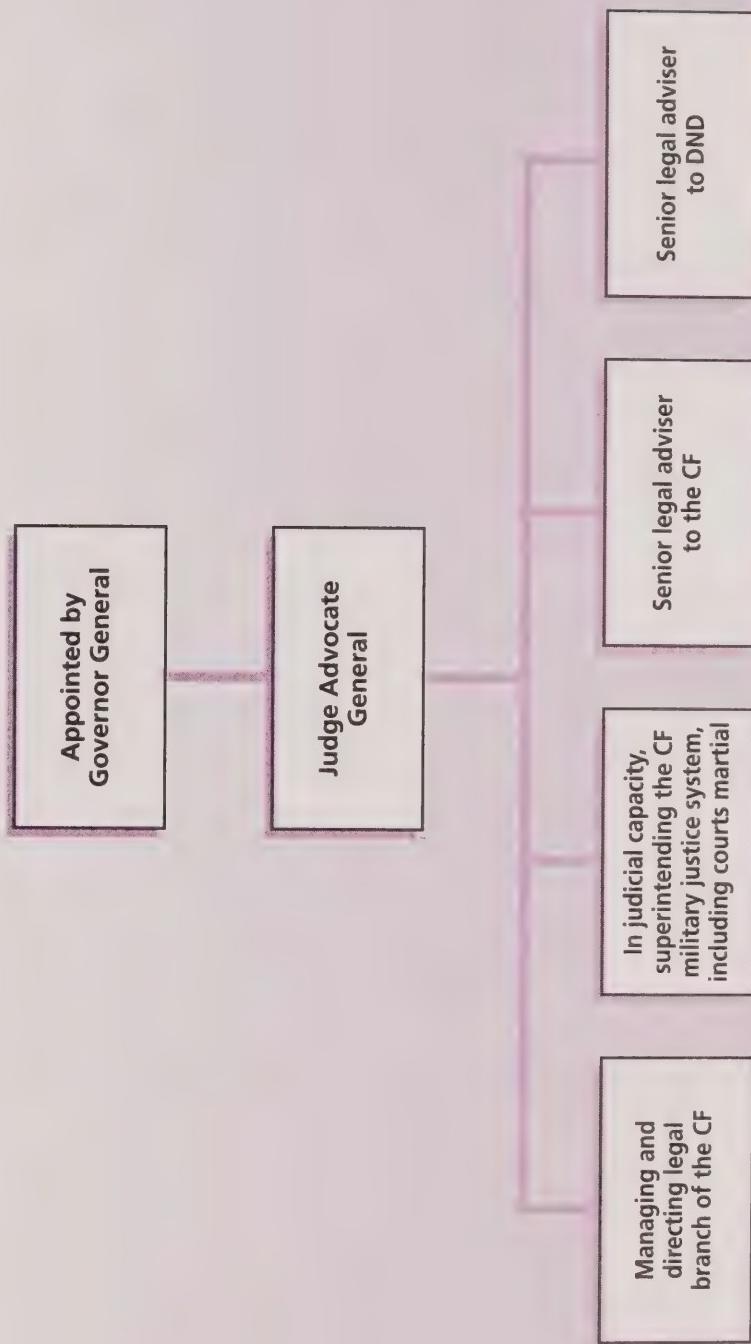
Abolishing the Office of the Judge Advocate General

40.35 The National Defence Act be amended to

- (a) replace the office of the Judge Advocate General with two independent institutions:
 - (i) the office of the Chief Military Judge, to assume the judicial functions now performed by the office of the Judge Advocate General; and
 - (ii) the office of the Director General of Military Legal Services, to assume the prosecution, defence and legal advisory roles now performed by the office of the Judge Advocate General;
- (b) specify that the office of the Director General of Military Legal Services consists of three branches: a Directorate of Prosecutions, a Directorate of Advisory Services, and a Directorate of Legal Defence;
- (c) provide that the Director General of Military Legal Services reports to the Minister of National Defence;
- (d) provide that the Chief Military Judge and all other judges be civilians appointed under the federal *Judges Act*; and
- (e) state that judges trying serious disciplinary and criminal misconduct are totally independent of the military chain of command.

The office of the JAG is another unfortunate vestige of the past. The very title, Judge Advocate General, highlights the inherent conflict of interest — that between judge and advocate — and the lack of independence within the present military justice system (see Figure 40.2). Abolishing the office of the JAG would go beyond a cosmetic name change and would have profound significance for the rule of law and the integrity of the military justice system.

Figure 40.2
Present Structure of the Office of the Judge Advocate General



Although defence and prosecution directorates would be housed under one organizational roof, professional interaction between the two would not be permitted. However, advisory services lawyers could interact professionally with lawyers from the prosecution or legal defence directorates, as there would be no conflict of interest in their doing so.

The Chief Military Judge, and all other judges appointed to adjudicate military misconduct, would be civilian appointees, appointed under the federal *Judges Act*. Thus, military judges would stand completely outside the chain of command. The sole function of judges would be to adjudicate or assist at courts martial, and the Chief Military Judge would also carry out administrative tasks relating to adjudications.

Reform along these lines is clearly necessary in the Canadian military context (see Figure 40.3). First, it would sever the judicial from the legal advisory function, resolving the current conflict of interest in the office of the JAG. Second, it would sever the judicial from the prosecution and defence functions. It would also enhance independence in the exercise of prosecutorial authority and in the conduct of legal defence.

Establishing the Office of the Inspector General

The changes proposed here to the structure of the military justice system (see Figure 40.4) will help resolve many of the individual deficiencies of the system. However, as with any civilian justice system, the military justice system needs a mechanism for its overall and continuing review. Many countries have independent agencies, such as law reform commissions and policy bodies within government departments, to review justice issues. The same need clearly exists for the military justice system. As well, a mechanism is needed to ensure civilian control of the military — a fundamental principle of Canadian society.¹¹⁹

In Volume 2, Chapter 16, Accountability, we discussed the need for an Office of the Inspector General of the Canadian Forces. The Inspector General would incorporate the concepts of a military inspector general and an ombudsman. The Inspector General would perform several roles in relation to the military justice system.

Figure 40.3
Proposed Replacement of Office of the JAG

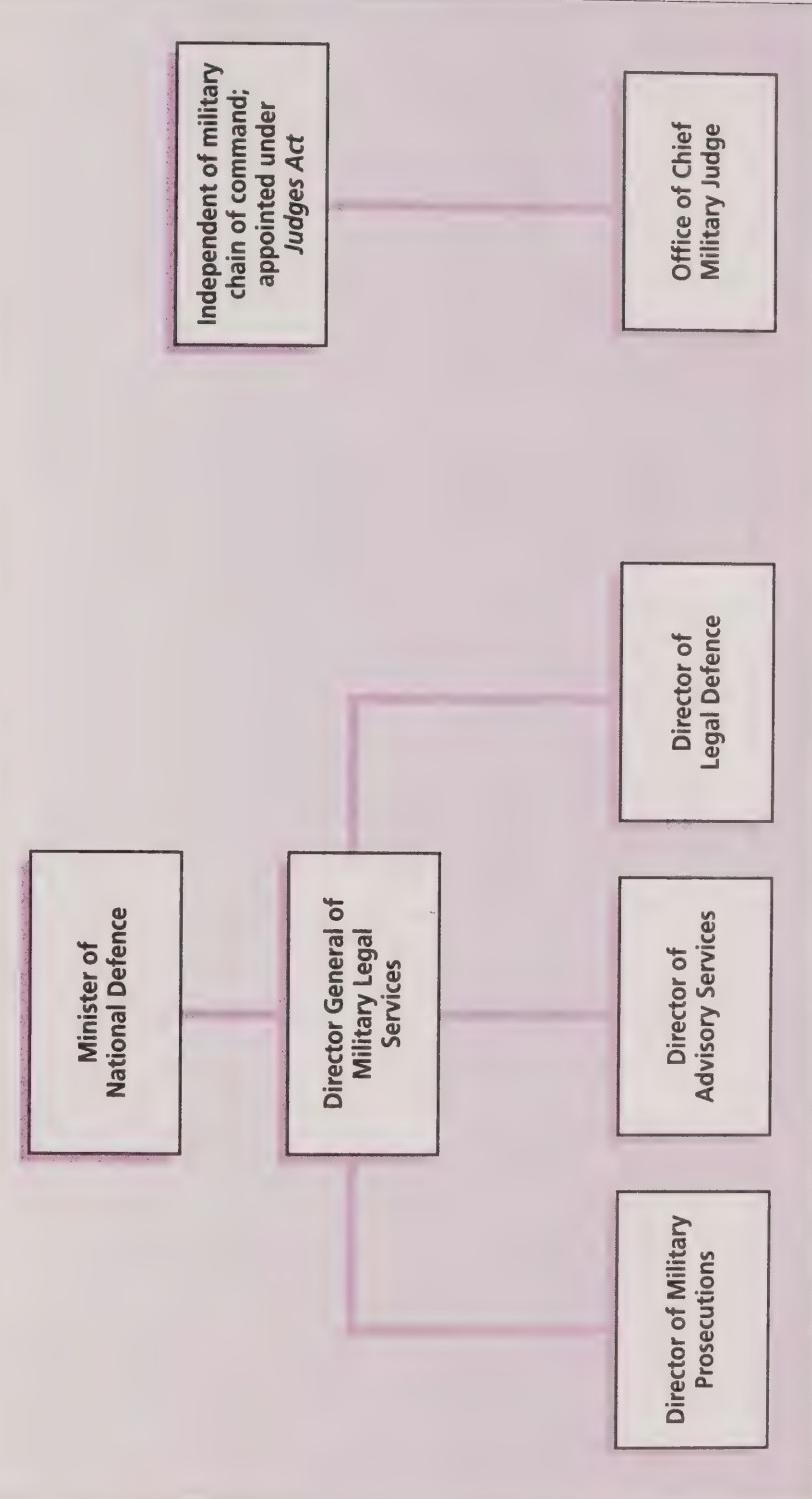
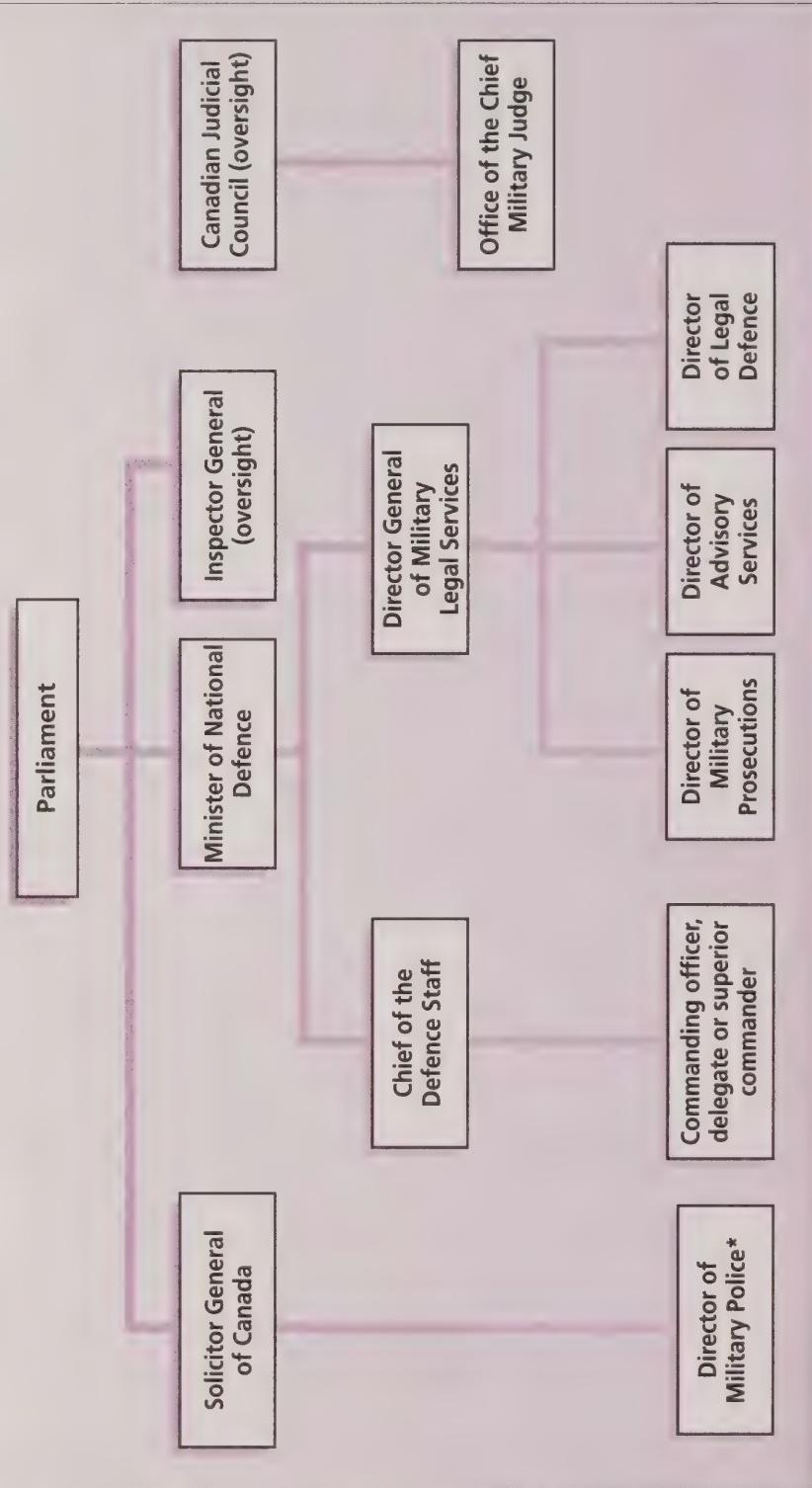


Figure 40.4
Main Organizations and Players in the Proposed Restructured Military Justice System



Inspector General's Military Justice Functions

40.36 The *National Defence Act* be amended to establish an Office of the Inspector General, headed by an Inspector General with the following functions relating to military justice:

- (a) **Inspection:** Inspections would focus on systemic problems within the military justice system.
- (b) **Investigations:** The Inspector General would receive and investigate complaints about officer misconduct and about possible injustices to individuals within the Canadian Forces. Among the types of officer misconduct the Inspector General could investigate are the following:
 - (i) abuse of authority or position (for example, failure to investigate, failure to take corrective actions, or unlawful command influence); and
 - (ii) improper personnel actions (for example, unequal treatment of Canadian Forces members, harassment (including racial harassment), failure to provide due process, reprisals).
- (c) **Assistance:** among the Inspector General's functions would be to correct or assist in correcting injustices to individuals.

The Inspector General would be in charge of planning the measures to fulfil the mission of the office. However, the Governor in Council, the Minister, or the Chief of the Defence Staff could also direct the Inspector General to investigate a specific issue relating to the military justice system.

Inspector General's Military Justice Powers

40.37 The Inspector General have the power to inspect all relevant documents, conduct such interviews as may be necessary, review minor disciplinary proceedings and administrative processes, and make recommendations flowing from investigations.

Bringing Issues to the Attention of the Inspector General

40.38 Any person, Canadian Forces member or civilian, be permitted to complain to the Inspector General directly.

There should be no need to report the complaint to a superior or ask the superior's permission to make the complaint.

In Chapter 16, we reported that some members of the CF who appeared before this Inquiry did so against a backdrop of fear and intimidation. We concluded that because of the past actions of the chain of command, there must be a mechanism available to redress any reprisals that may be taken against witnesses after the Inquiry issues its report. We also called for a specific process to protect soldiers who bring reports of wrongdoing to the attention of their superiors. These are both roles that the Inspector General could perform.

Other Military Justice Recommendations

Publication of QR&O and CFAO

At present, regulations made under the authority of section 12 of the *National Defence Act* are exempt from publication.¹²⁰ The lack of ready access to the information contained in the QR&O and the CFAO impedes the fair operation of the system.

40.39 To the extent that the regulations and orders contained in the Queen's Regulations and Orders and Canadian Forces Administrative Orders can be made public without compromising overriding interests such as national security, the QR&O and CFAO be published in the Canada Gazette.

Ensuring Adequate Numbers of Legal Officers

40.40 Adequate numbers of legal officers be deployed with units to allow them to perform their respective functions — prosecution, defence, advisory — without putting them in situations of conflict of interest.

The number of legal officers accompanying units should not be affected by manning ceilings. A shortage of legal officers on missions creates a situation where these officers may have to combine functions — prosecution, defence, advisory — putting them in a situation of conflict of interest.

40.41 Legal officers receive increased training in matters of international law, including the Law of Armed Conflict.

40.42 Legal officers providing advisory services be deployed on training missions as well as actual operations.

40.43 Legal officers providing advisory services guide commanding officers and troops on legal issues arising from all aspects of operations, including Rules of Engagement, the Law of Armed Conflict, Canadian Forces Organization Orders and Ministerial Organization Orders.

40.44 Legal officers providing advisory services educate Canadian Forces members before and during deployment on local law, the Law of Armed Conflict, and Rules of Engagement.

40.45 A Law of Armed Conflict section of legal officers be established and staffed as soon as possible within the office of the Judge Advocate General and moved to the office of the Director General of Military Legal Services once that office is established.

ANNEX A

Somalia-Related Incidents

The Inquiry requested disclosure of all Somalia-related documentation. This chart summarizes information relating to potential disciplinary incidents or incidents requiring investigation as recorded in documentation received by the Inquiry.

Types of Report	BOI	Board of Inquiry	MPIR	Military Police Investigation Report	SIR	Significant Incident Report
	CR	Charge Report	MPUR	Military Police Unusual Incident Report	SITREP	Situation Report
		SI		Summary Investigation		

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators		
1	92.12.09	Between 0630 and 1100 hrs a CF member was absent without leave from CAR.	CR	92.12.10	92.12.23	N/A	No record of investigation.*	See Annex B, Disciplinary and Administrative Action Taken, #1 111 – tab 27

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators		
2	92.12.12	Military Police obtained information that suggested Col Labb� made the following statements: 1. "I am looking forward to the first dead Somali." 2. "A case of champagne to the first one who gets (or kills) a Somali."	MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	This investigation did not reveal any definitive link between these alleged statements and any subsequent events involving CF personnel and the death or abuse of Somali nationals, although it was determined the information did reach the junior ranks of the Canadian contingent.	None 40 — tab 14
3	92.12.24	At Baledogle, Somalia, a CF member failed to ensure his weapon was unloaded properly, resulting in an accidental discharge.	CR	93.01.05	93.01.07	N/A	No record of investigation.*	See Annex B, Disciplinary and Administrative Action Taken, #2 111 — tab 30

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
4	92.12.25	A CF member became intoxicated, threatened persons on board HMCS Preserver and tried to take over the ship.	CR	93.01.01	93.01.04	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #3	111 — tabs 17 and C
5	92.12.27	A medical assistant failed to secure narcotics and four morphine auto injectors adequately, thereby causing their loss.	CR	N/A	N/A	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #6	111 — tabs 14 and 15
6	92.12.27	At Baledogle, Somalia, two CF members failed to ensure their weapons were unloaded properly resulting in an accidental discharge.	CR	93.01.05	93.01.07	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #4 and #5	111 — tabs 8 and 25
7	92.12.29	A soldier fabricated an untrue statement to cover up the firing of a warning shot.	CR	93.01.06	93.01.08	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #7	111 — tab 29

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report				Conclusions and Recommendations		Action Taken as a Result		Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators					
8	93.01 to 93.06	Members of the CARBG were allegedly giving noxious substances, in the form of urine in water bottles and packets of Tabasco sauce, to Somali nationals. As part of an initiation members of the Royal Canadian Dragoons Squadron, CARBG were allegedly having their picture taken with a skull. Additional information stated that directives were given to paint the hands of Somali thieves white before releasing them.	MPIR	94.03.22	95.03.08	Sgt Casseau PO2 Ross	Inconclusive.		None.		40— tab 16
9	93.01.01	An officer struck a subordinate, while on board HMCS Preserver.	CR	93.01.18	93.01.25	N/A	No record of investigation.*		See Disciplinary and Administrative Action Taken, #8		111— tab 2

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
10	93.01.02 93.01.03	Loss of a radar transponder at Belet Huen airfield.	SI	93.05.16	93.05.18	Capt Poitras	The loss of this item was not a case of negligence. Recommended write-off of the radar transponder.	Written off at public expense. Total value, \$16,600.	DND 064697 42 — tab 1
11	93.01.02	A motor vehicle driven by a private struck a Somali child. He received a frontal, partial skull fracture. Col Labbé was a passenger in the vehicle.	SIR	93.01.03	N/A	N/A	Child was transported to 1st U.S. Medical Battalion Hospital in the U.S. Embassy Compound.	None. Soldier was not at fault.	The victim's father claimed \$750 (U.S.) in compensation. Without admitting liability, \$750 (U.S.) was paid in exchange for a release of any future claims arising from the accident. 42 — tab 1

Incident			Report			Conclusions and Recommendations			Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators				
12	93.01.03	A Somali man was upset at the Canadian troops for seizing his weapon and was challenging them. According to the documents, the shot that injured the Somali was not aimed but was intended as a warning shot. It apparently ricocheted and struck the victim in the foot. The incident involved soldiers from 3 Commando.	SIR	93.01.03	N/A	CJFS HQ	No record of investigation.*	None	42 — tab 2	
13	93.01.04	Col Labb��, during a visit to Belet Huen on 93.01.04, apparently expressed some concern about the detention of certain prisoners after witnessing a Somali in custody of CF.	MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	Not indicated	None.	40 — tab 5	
14	93.01.04	At Belet Huen, Somalia, while cleaning his weapon, a CF member failed to ensure that his weapon was cleared, causing it to fire.	CR	93.01.16	93.01.18	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #9	111 — tab 7	

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Incident			Report				Action Taken as a Result		Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators	Conclusions and Recommendations		
15	93.01.04	At Belet Huen, Somalia, a CF member failed to handle his weapon properly, causing an accidental discharge.	CR	93.01.05	93.01.07	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #10	111 — tab 31
16	93.01.06	At Belet Huen, Somalia, while preparing for patrol, a CF member failed to ensure that his weapon was cleared, causing it to fire.	CR	93.01.14	93.01.16	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #11	111 — tab 26
17	93.01.08	At Mogadishu, Somalia, a CF member failed to load his weapon properly.	CR	93.01.18	93.01.22	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #12	111 — tab 4
18	93.01.09	While on escort duty, a CF soldier failed to make his weapon safe, thereby causing a negligent discharge.	CR	N/A	93.01.16	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #13	111 — tab 6

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Incident			Report			Conclusions and Recommendations		Action Taken as a Result		Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators				
19	93.01.11	While serving with the CARBG, Somalia, a CF member failed to ensure that a pistol he was handling was clear, causing it to fire.	CR	93.01.31	93.02.12	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #15	111 — tab 11	
20	93.01.11	A lieutenant shot himself accidentally while cleaning his pistol.	SIR	93.01.11	N/A	LCol Young	No record of investigation.*	See Disciplinary and Administrative Action Taken, #14	83A — tab 13 and 111 — tab 39	
21	93.01.15	A CF member mixed a military uniform with civilian clothing by wearing a baseball cap contrary to the orders given by his platoon commander.	CR	93.01.21	93.01.26	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #16	111 — tab 5	
22	93.01.18	A CF member behaved in a contemptuous manner toward a captain by waving his arm in the air as if to brush him off, stating, "I do not have to wait for you either sir."	CR	N/A	93.01.26	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #17	111 — tab 36	

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/Investigators		
23	93.01.19	While serving with the CARBG, Somalia, a CF member failed to ensure his weapon was cleared after a vehicle search causing it to fire.	CR	93.01.25	93.01.29	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #18 111 — tab 1
24	93.01.20	Tilley hats went missing between shipment from CFB Petawawa and the first complete count in Somalia.	SI	93.01.29	93.02.08	Lt Greenaway	274 Tilley hats were missing. The approx. value was \$9590. Recommended that the shipment security be tightened to prevent recurrence. Also recommended a write-off at public expense.	Unknown 64 — tabs 8, 9 and 12
			SI	93.01.29	93.05.15	Lt Greenaway	317 Tilley hats were missing. The approx. value was \$11,095. Recommended a write-off at public expense.	Unknown 64 — tabs 19 and 20

Incident			Report			Conclusions and Recommendations		Action Taken as a Result		Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators				
			MPIR	93.05.09	93.05.20	Sgt Barrow	148 Tilley hats were missing. The approx. value was \$5180. Suspended.	Unknown		DND 014037
			SI	93.05.22	93.06.05	Lt Vaillancourt	475 Tilley hats were missing. The approx. value was \$16,625. Recommended a write-off at public expense.	Unknown	64 – tabs 25 and 27	
25	93.01.21	A Canadian Bison vehicle with two crew struck a mine. No personnel casualties.	SIR	93.01.21	N/A	LCdr McEwen	No record of investigation.*	None		DND 027134
26	93.01.21	Allegation of mistreatment of two Somali youths caught in Service Commando Camp.	MPIR	93.05.09	93.05.20	MWO Gosse Sgt Barrow	Evidence was found that, after consultation with local people, captain decided to put signs around necks of detainees and leave in public view. Concluded.	None		DND 059877

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
27	93.01.21	A CF member fell out the back door of a moving military vehicle. He sustained back injury but no spinal lesion.	SIT-REP	N/A	93.01.21	CJFS	No record of investigation.*	None	41B — tab 8
28	93.01.25	Loss of a mail bag.	SI	93.02.19	93.02.22	Capt Robichaud	That corrective actions be taken against the CF member for his lack of judgement.	None	DND 064964
29	93.01.26	A military vehicle struck a mine. No personnel casualties.	SIT-REP	N/A	93.01.27	CJFS	No record of investigation.*	None	41B — tab 14
30	93.01.27	Alleged mistreatment of detainees, by holding them up to public ridicule, by members of the CARBG. Senior members of the CF were allegedly aware of the incident.	MPIR	94.03.22	94.07.19	MWO Dowd PO2 Ross Maj Gesner	Those aware of photographs depicting mistreatment took what they believed was appropriate action. Concluded.	None	DND 019004 DND 019005

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Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/Investigators			
31	93.01.27	Mistreatment of some five detainees as depicted in two photos which were placed in BG Beno's hands. He forwarded them to Col Labb�.	MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	Evidence was found that BGen Beno and LCol Mathieu were aware of the photos.	None	40 — tabs 6, 7 and 10
32	93.01.28	Instructions issued to destroy photos of detainees. It was alleged that on January 28 a WO of Transport Section, Service Commando ordered his personnel to destroy photos of the detainees whom Service Commando captured on January 27. The treatment of these detainees was investigated in incidents #30-31. At the time of the incident a number of soldiers took pictures of, and posed with, the prisoners.	MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	Evidence was found.	None	40 — tab 8

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators		
33	93.01.28	A Canadian Bison vehicle struck a land mine five kilometres north of the town of Ali Hassan. No personnel casualties. The mine caused extensive damage to undercarriage of vehicle.	SIR	93.01.28	N/A	LCdr McEwen	No record of investigation.*	DND 233435
34	93.01.29	A patrol was apparently investigating suspected bandit roadblock when it came upon some armed Somalis. Warning shots were fired when they began to flee, and one Somali fired on the patrol. The patrol then returned fire. Later they recovered an AK-47 and a bloody shirt. The Somalis were tracked to a point where they had apparently met a vehicle.	SIR	93.01.29	N/A	Maj Moffat	No record of investigation.*	83 — tab 10

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
35	93.01.31	Alleged \$202.46 shortage in CJFS HQ Canteen.	SI	93.02.02	N/A	Capt Kennedy	Loss attributed to spoilage, shipment and possibly stolen items. Recommended loss be written off, proper accounting, stock-taking procedures and a higher level of security be implemented, and that money be stored in a safe.	None	DND 192093 DND 065023
36	93.02.01	Loss of binoculars.	SI	93.04.01	93.04.05	Capt Lacasse	Recommended that an administrative deduction be imposed against two CF members in the amount of \$98 and that a write-off be initiated.	Unknown	DND 064740

Incident			Report			Conclusions and Recommendations		Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
37	93.02.01	At the Intercontinental Hotel in Nairobi, while drunk, a CF member struck a hotel security guard in the chest for no apparent reason.	CR	N/A	93.02.13	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #20	111 – tab 10
38	93.02.03	A CF member failed to properly carry out the safety precautions for the C7 rifle before cleaning, thereby causing a round to be negligently fired.	CR	93.02.06	93.02.16	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #21	DND286059
39	93.02.04	Vehicle accident which allegedly took place between a vehicle rented by an ARFOR CO and CAR.	SI	93.02.09	93.03.01	CARBG / DCO	Unknown.	Unknown	DND 065060
40	93.02.10	In the town of Balem Balle, A Squadron RCD came under fire. Accidental discharge of a large calibre weapon. One villager slightly wounded, one goat and one cow killed.	SIR	93.02.10	N/A	N/A	No record of investigation.*	None	DND 369605

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/Investigators		
41	93.02.10	At Intercontinental Hotel, Nairobi, Kenya, a CF member was drunk.	CR	93.02.14	93.02.16	N/A	No record of investigation.*	111 — tab 34
42	93.02.13	A .38 calibre revolver was seized from a Somali driver during a vehicle search by a WO. The WO told his OC that he had returned the weapon to the Somali owner but later admitted this was not true. The weapon had been mailed to Canada.	MPIR	93.05.10 93.06.18	93.05.16 Sgt Dallaire	MWO Gosse Sgt Barrow	Suspended. None	DND 013987 DND 013988 DND 014004 DND 014005
43	93.02.15	An armed Canadian soldier allegedly stole a copper sword from a Somali residence.	MPIR	93.05.24	93.06.06 94.02.24	Maj Wilson Sgt Barrow WO Jessome	Suspended.	DND 014055 DND 014056 DND 020779

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Incident			Report			Conclusions and Recommendations		Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
44	93.02.15	Near the village of Raqso, Somalia, CF member was wearing a green bandana, contrary to 3 Commando Standing Orders.	CR	93.02.22	93.02.23	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #23	111 — tab 42
45	93.02.16	Alleged theft of a case of fragmentation grenades.	SI	93.02.19	N/A	Lt Webb	Error in accounting due to miscount of grenades shipped on 93.02.15.	None	NS 045482 DND 037312
46	93.02.17	Riot at the Bailey bridge (one killed / two injured).	SIR	93.02.17	N/A	N/A	No investigation conducted until 93.05.07.	None	52 — tab 5
			SIR	93.02.17	N/A	N/A	No investigation conducted until 93.05.07.	None	52 — tab 7
			MPIR	93.05.07	93.05.13	MWO Gossé Sgt Gipp	Concluded.	None	52A — tab 25

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report				Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators	Conclusions and Recommendations	
47	93.02.18	A civilian claimed that a captain had sold him two Canadian army knives.	MPIR	93.05.29	94.02.01	MWO Stewart Sgt Kent	Concluded.	None DND 014165
48	93.02.19	At the village of Tree Cento, Somalia, a CF member failed to properly complete the unloading drill for his C7 rifle, thereby causing a round to be negligently fired.	CR	93.02.22	93.02.24	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #24 111 — tab 44
49	93.02.20	A Somali boy was treated at the Service Commando hospital and claimed that he was injured when a Canadian vehicle ran over his hut.	MPIR	93.05.07	93.05.15	MWO Gossé Sgt Gipp	Concluded.	None DND 060094 DND 060081
			MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	This allegation was not confirmed.	40 — tab 9
50	93.02.21	A Cougar vehicle struck a mine. No personnel casualties.	SIR	93.02.21	N/A	Maj Moffat	No record of investigation.*	DND 054396

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report			Conclusions and Recommendations		Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
51	93.02.21	Damage to non-perishable food stock during shipment to Beler Huen.	SI	93.02.26	93.02.30	Capt Hill	235 cases of soft drink and approx. 30 wine glasses were damaged. The total value was \$1077.55. No persons were to blame for the damage to the shipment Recommended write-off.	None	DND 064942
52	93.02.22	A Cougar vehicle struck a mine. No personnel casualties but extensive damage to the vehicle.	SIR	93.02.22	N/A	Maj Parsons	No record of investigation.*	None	DND 054392
53	93.02.23	Riot in front of the U.S. Embassy. A CCF member received minor injuries to head and neck.	SIR	93.02.23	N/A	Maj Hutchings	No record of investigation.*	None	DND 053556
54	93.02.26	Allegation that LCol Mathieu made a statement "...kill the bastards, I'll cover for you..." at an orders group.	MPR	95.02.07	95.05.28	MWO Dowd WO Murray-Ford MS Carboneau	Concluded.	See Disciplinary and Administrative Action Taken, #19	DND 279425

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/Investigators			
55	93.03.04	On March 4, one Somali was wounded and one was killed by members of the CARBG. The two Somalis were allegedly attempting to infiltrate the Engineers and the MEDEVAC Helicopter compounds.	SIR	93.03.04	N/A	N/A	No investigation until 93.03.05.	None	48 — tabs 1, 2, 3
			SI	93.03.05	93.03.06	Capt Hope	Action was reasonable and fully justified, and adhered to the ROE of Operation Deliverance. No disciplinary or administrative action to be taken. ¹	None	48 — tab 4
			MPIR	93.04.15	93.08.13	MWO Bernier Maj Buonamici	Evidence to support charges was found.	See Disciplinary and Administrative Action Taken, #25	48A — tab 6 48C — tab 31
							Military Police were investigating the initial incident; they uncovered concerns about potential cover-up in Somalia, and then investigated this. The two were reported together. After submitting the report of incident cover-up, a further investigation was commenced into an allegation of a cover-up at NDHQ.		

Incident			Report			Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators	Conclusions and Recommendations
56	93.03.07	At Marabaan, a CF member failed to ensure that his weapon was properly cleared, thereby causing it to fire.	CR	93.03.17	93.03.27	N/A	No record of investigation.*
57	93.03.09	At Belet Huen, while cleaning his weapon, a CF member failed to ensure that his weapon was cleared, causing it to fire.	CR	93.03.10	93.03.12	N/A	No record of investigation.*
58	93.03.10	At Belet Huen, while cleaning their weapons, two CF members failed to ensure that their weapons were properly cleared, thereby causing them to fire.	CR	93.03.10	93.03.15	N/A	No record of investigation.*
59	93.03.11	While on sentry duty at the Canadian Engineer Camp, a CF member failed to ensure a 12-gauge shotgun was on safety, causing it to fire.	CR	93.03.13	93.03.20	N/A	No record of investigation.*

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident				Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/Investigators				
60	93.03.13	A 2 Commando platoon conducted a raid on a suspected roadblock. The captain in charge was dressed in civilian clothes and used a Somali vehicle.	MPIR	94.03.11	96.03.06	MWO Dowd Sgt Pellerier WO Newman	Concluded.	None	40B — tab E	
61	93.03.14	During departure an aircraft became enveloped in dense dust cloud created by rotor wash. Inadequate power remained to clear the condition and descent was initiated. Subsequent impact caused collapse of main landing gear.	SIR	93.03.14	N/A	N/A	Flight Safety Summary Investigation likely occurred.	None	DND 081641 DND 088168	
62	93.03.14	At Belet Huen, a CF member refused to remove a lean-to structure and relocate his accommodation to tentage, when ordered to do so by a captain.	CR	93.03.22	93.03.26	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #31	111 — tab 13	

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators		
64	93.03.17	A Red Cross guard was wrestling with a Somali and his weapon discharged into the ground near a CF soldier. The Canadian fired on the guard and killed him.	SI	93.03.18	93.03.29	Capt Rollin	No administrative / disciplinary action should be taken against members of 2 Commando.	43 — tab 221
65	93.03.04 93.03.17	Service Commando personnel allegedly ordered the destruction of photos of Mr. Arone or other detainees.	MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	Insufficient evidence.	40 — tab 12
66	93.03.19	After MCpl Matchee's arrest for the murder of Mr. Arone, he was placed in a bunker and under guard. He was later found hanging in the bunker and resuscitated.	SIR	93.03.19	N/A	Maj Moffat	No investigation until 93.03.20.	None against personnel involved in the detention and custody of MCpl Matchee. 39 — tabs 3/4/5
			SI	93.03.20	93.03.23	N/A	No evidence to indicate negligent performance of duty regarding any personnel involved in this incident.	39 — tab 7

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
			MPIUR	N/A	93.05.15	Maj Wilson	A unit summary investigation was conducted and provided to NDHQ J1 93.04.24. No MP investigation was previously conducted.		39 — tabs 22, 23, 24
			MPIR	93.05.14	94.03.28	MWO Gosse WO Jessome Sgt Barrow	Concluded.		39 — tabs C, E, I, J, K
			SI	N/A	94.04.26	Capt CW Reeves	No disciplinary or administrative action required against any person other than MCpl Matchee.		39A — tab L

Incident			Report				Action Taken as a Result		Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators	Conclusions and Recommendations		
67	93.03.26	An A Squadron military vehicle struck the Bailey bridge. All six personnel on board were injured. The vehicle sustained damages in the amount of \$57,625.08	SI	93.03.27	93.04.14	Lt Fleet	Recommended disciplinary or administrative action against the driver / and / or senior passenger, and preventive action.	See Disciplinary and Administrative Action Taken, #39.	DND 064836
68	93.03.28	A CF member hit the duty sergeant in the ribs with his left elbow. He said to the duty sergeant in a loud voice, while vigorously pointing his finger in his face, "You don't have the right to talk to me like that," or words to that effect.	CR	93.03.29	93.03.31	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #40.	111 — tab 18
69	93.03.29	Accidental discharge. A C7 rifle was under a seat loaded without the safety on and fired when the seat was lowered. Bullet hit hard surface and fragmented, spraying a CF member's forearm and hand. Superficial injuries only.	SIT-REP	N/A	N/A	CARBG	No record of investigation.*	None	DND 04041

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators		
70	93.04.02	Corporal acted in a discreditable fashion while drunk in Mombassa, Kenya.	MPIR	93.06.03	93.06.09	Maj Wilson Sgt Barrow	Concluded.	DND 014129
71	93.04.03	At the Reef Hotel in Mombassa, Kenya, a CF member was drunk, grabbed an officer's steak from his plate, taking a bite of it and then spitting it out. The member behaved in a disorderly manner bringing discredit on the Canadian Forces.	CR	93.04.08	N/A	N/A	No record of investigation.*	111 — tab 21 See Disciplinary and Administrative Action Taken, #42
72	93.04.05	CF member negligently performed a military duty .	CR	93.04.12	N/A	N/A	No record of investigation.*	111 — tab 41 See Disciplinary and Administrative Action Taken, #43
73	93.04.05	At the Reef Hotel, Mombassa, Kenya, a CF member was in lobby of hotel, drunk and nude, bringing discredit to Canadian Forces.	CR	N/A	93.04.12	N/A	No record of investigation.*	111 — tab 22 See Disciplinary and Administrative Action Taken, #44

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
74	93.04.08	CARBG Cougar struck a mine. No personnel casualties. The vehicle sustained extensive damage.	SIR	93.04.08	N/A	Capt Lavigne Maj Hutchings	No record of investigation.*	None	DND 054193 DND 085550
75	93.04.10	A Bison vehicle struck a mine. No personnel casualties. Both right rear tires, the right intermediate rear support arm and brake lines were destroyed.	SIR	93.04.10	N/A	LCol Young	CO CARBG ordered vehicles to avoid unnecessary movement on secondary tracks.	None	DND 054234
76	93.04.14	At Camp Holland, Matabaan, a CCF member, without authority or proper knowledge of the weapon, loaded a C-5 mounted gun on a Grizzly turret and while trying to unload it caused it to fire.	CR	93.04.20	93.05.10	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #45	111 — tab 38

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
77	93.04.16-04.18	On or about April 16 to 18 LCol Mathieu allegedly ordered that all photos of Somali prisoners should be destroyed after receiving a general's letter expressing some concern with respect to photos of prisoners taken by soldiers.	MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	Concluded.	None	40 — tab 13
78	93.04.23	At Belet Huen, two CF members while on sentry failed to wear fighting order.	CR	93.04.23	93.04.29	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #46 and #47	111 — tab 32
79	93.05.00	A photo of Mr. Arone's body was possibly withheld from Military Police.	MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	Concluded.	None	40 — tab 11
80	93.05.00	Col Labbé led officers in a mission to clear and secure an area at or near Mogadishu and subsequently took some Somali shillings from a vehicle. ²	MPIR	94.03.22	95.03.08	Sgt Gasseau PO2 Ross	Concluded.	None	40 — tab 15

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
81	93.05.03	Three Somali youths were caught within RCD HQ compound (Matabaan) and held for 48 hrs. "Thief" signs were hung around their necks.	MPIR	93.05.11	93.05.20	MWO Gosse Sgt Barrow	Concluded.	None	DND 014010
82	93.05.03	An investigation was held to determine whether CO CJFS directions to CO CARBG regarding not mistreating detainees were passed on to subordinates.	MPIR	94.03.22	94.09.26	MWO Dowd Maj Gesner	Concluded.	None	DND 023895
83	93.05.03	Four soldiers were sitting and talking. During the conversation a CF soldier put a magazine on a C7 rifle which he subsequently cocked and fired. Projectile hit Cpl Abel in head and killed him.	SIR	N/A	93.05.03	LCol Young	No investigation until 93.05.03.	See Disciplinary and Administrative Action Taken, #48	37 – tab 1 DND 051050

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
			MPUIR	N/A	93.05.03	N/A	Canadian JFHQ MP to investigate the incident with the deployment of an investigative team from Mogadishu 93.05.04.		37 — tab 3
			SI	93.05.03	93.05.15	Capt Sox	Suggested that the CF soldier not be charged until after the findings by the MP investigation.	Concluded.	37 — tab 14
			MPIR	93.05.03	93.08.13	WO Jessome Sgt Barrow			37 — tabs 17/21

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators		
84	93.05.11	At Kismayo a CF member was drunk and disobeyed a direct order by a sergeant to cease swimming in Kismayo Harbour. The member was forcefully recovered by Belgian combat divers.	SIR	93.05.11	N/A	N/A	No record of investigation.*	See Disciplinary and Administrative Action Taken, #49
			CR	93.05.13	93.05.14	N/A	No record of investigation.*	111 — tab 23
85	93.05.12	An ID card was found that had been lost and not reported.	MPIR	93.05.18	93.05.31	Maj Wilson	Concluded.	None
86	93.05.15.	During a food convoy escort, a light machine gun and combat webbing were stolen from the rear of an AVGP.	SIR	93.05.15 93.05.17	N/A	N/A	No investigation until 93.05.16.	DND 249244 DND 249257
			MPIR	93.05.16	93.05.24	MWO Gosse Sgt Barrow	Concluded.	DND 014024 DND 014025

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Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
87	93.05.17	A Canadian soldier was stopped by the driver of a Somali vehicle who alleged he had been hit from behind by a CF vehicle.	MPIR	93.05.17	93.05.22	MWO Gosse Sgt Dallaire	Concluded.	None	DND 014106
88	93.05.20	An accidental discharge of a large calibre weapon. No injuries resulted.	SIT-REP	N/A	93.05.21	CJFS	No record of investigation.*	None	41J — tab 8
89	93.05.21	While driving a military vehicle the subject hit a young Somali boy who had run in front of the vehicle to get some food that one of the passengers threw away.	MPIR	93.05.21	93.05.22	MWO Gosse Sgt Dallaire	Concluded.	None	DND 014111 DND 014112
90	93.05.25	Two CF soldiers, who were unarmed and dressed in civilian clothing, were apprehended attempting to enter 1 Commando lines in Mogadishu through a barrier of concertina wire. Both had been drinking. ³	MPIR	93.05.25	93.05.26	MWO Gosse Sgt Gipp	Concluded.	See Disciplinary and Administrative Action Taken, #50	DND 014132 III — tab 3

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Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
91	93.05.30	A CF member while riding in a taxi in town of Trenton, hit the facial area of a passenger and threatened the subject with the words "I could kill you if I wanted to. I just got back from Somalia".	MPIUR	N/A	93.06.04	Cpl Power	No record of investigation.*	Charges pending by Trenton municipal police.	DND 0333050
92	93.06.01	A sub-unit canteen at Belet Huen sustained an operating deficit of \$1400 which was thought to be attributable to theft.	MPIR	93.06.02	93.06.05	Maj Wilson Sgt Dallaire	Suspended.	None	DND 014046
93	93.06.04	A vehicle accident occurred between a CF member and a Somali.	MPIR	93.06.04	93.06.07	MWO Goss Sgt Gipp	Concluded.	None	DND 014119 DND 014121
94	93.06.05	While a CF soldier was driving a tractor and water tank trailer in Mogadishu, Somali civilians threw rocks and fired gunshots at the vehicle.	MPIR	93.06.05	93.06.08	Maj Wilson Sgt Dallaire	Concluded.	None	DND 014103

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Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/Investigators		
95	93.06.11	While operating a forklift, a CCF soldier struck a Somali policeman causing him minor injuries.	MPIR	93.06.11	93.06.18	Maj Wilson Sgt Dallaire	Concluded.	None DND 014158 DND 014159
96	93.06.20-06.30	Improper security of CJFS goods shipped in transit. A number of containers from the CJFS "were not sealed in any way and the lids were sitting loose on top of the crates". The containers held weapons, flack vests, night vision goggles, live ammunition, 21 boxes of files marked secret, two laptop computers. "The information contained on the hard drives and on the 3.5 inch computer disk left in one of them revealed they contained secret and confidential information."	MPUR	N/A	93.07.09	Sgt Kent	Pending.	Unknown DND 079550

Incident			Report				Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators			
97	93.06-93.09	Medical equipment was damaged during the redeployment from Somalia to Canada. The equipment was improperly packed and sustained water damage.	SI	94.01.25	94.06.24	Capt McLean	No proof of negligence found, so disciplinary action could not be taken.	BGen Beno directed the 2 Field Ambulance to produce an SOP for deployment and redeployment packaging, supervising and shipping of sensitive medical equipment for varying climatic conditions and modes of transportation.	DND 031049 DND 031052 DND 031601 DND 031611
98	93.09.15	Munition was returned to Canada without the required authorization from the established chain of command.	SI	93.10.12	94.01.10	Capt Mumford	Concluded.	None	DND 030125 DND 030126 DND 030127

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators		
99	Fall 93-Dec. 95	Documents held within DGPA were allegedly withheld, destroyed or altered before release under the Access to Information Act.	MPIR	95.10.13	96.06.11	MWO Dowd Sgt Bernard Sgt Pelletier Cpl Raymond	Col Haswell attempted to bypass the Access to Information system. Gen Boyle was aware that RTQs were being provided to Mr. McAuliffe outside the Access to Information system, contrary to an earlier statement on 95.12.07.	See note at end of Disciplinary and Administrative Action Taken.
100	95.02.15	Classified information leaked to press.	MPIR	95.02.15	95.04.24	Capt Fraser WO Sylvain	Concluded.	None
101	95.10.04	Many inconsistencies were discovered in the NDOC logs, including missing serial numbers, serial numbers out of sequence, and blank database records.	MPIR	95.10.11	95.11.09	MWO Dowd Sgt Bernard S/Sgt Hampel (RCMP)	There was no evidence of deliberate deletion information. The inconsistencies can be attributed to "insufficient training, lack of audits and poor operating procedures".	None

Incident			Report			Conclusions and Recommendations	Action Taken as a Result	Document Book No.
No.	Date	Description	Type	Date Ordered	Report Date	Authors/ Investigators		
102	96.04.26	A CCF member conducted media interviews and published a book that were critical of the military. He also left the Citadel without permission to take documents to the Commission of Inquiry.	CR	96.05.08	97.02.27	N/A	No record of investigation.*4	118B — tabs 20, L, M Action Taken, #51

* The Inquiry received no record of an investigation; this does not necessarily mean that no investigation took place.

- After reviewing Capt Hope's SI, Col Labbé characterized it as "incomplete and in places misleading" and therefore wrote, on March 23, 1993, his own report on the incident which he sent to the DCDS, VAdm Murray (Document Book 48B — Tab 16). The DCDS forwarded Co Labbé's report to JAG for a legal review. JAG then requested Capt Hope's SI in order to complete this process. The SI report was provided by Col Labbé on April 2, 1993. LCol Watkins reviewed both reports and wrote his legal opinion which was finally given to VAdm Murray on April 14, 1993 (Document Book 48AB — Tab 2). LCol Watkins concluded that a further MP investigation was needed.
- The MPIR indicates that this transpired in May 1993. However, HMCS *Preserver* left for Canada on March 7, 1993, and naval officers were present during the incident. Therefore the incident must have occurred sometime in the early part of the in-theatre phase.
- The Inquiry obtained charge reports pertaining to only one of the individuals.
- The Inquiry is aware that an investigation took place, but no supporting documents were provided to us.

ANNEX B

Disciplinary and Administrative Action Taken

This chart summarizes disciplinary or administrative action taken in response to Somalia-related incidents as recorded in documentation received by the Inquiry.

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
1	92.12.09	Cpl	Absent without leave (90 NDA)	Absent without leave from CAR.	Guilty/\$20 fine.	92.12.23	Maj C. Seward	111 – tab 27
2	92.12.24	Cpl	Neglect to the prejudice of good order and discipline (129 NDA)	Failed to ensure his weapon was unloaded properly, resulting in an accidental discharge.	Guilty/\$1,100 fine.	93.01.07	LCol J.C.A. Mathieu	111 – tab 30
3	92.12.25	Tpr	Drunkenness (97 NDA)	While on board HMCS Preserver, was drunk.	Guilty/30 days detention for both offences.	93.01.04	LCol J.C.A. Mathieu	111 – tab 17

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
4	92.12.27	MCpl	Neglect to the prejudice of good order and discipline (129 NDA)	Failed to ensure his weapon was unloaded properly resulting in an accidental discharge.	Guilty/\$1,200 fine.	93.01.06	LCol J.C.A. Mathieu	111 — tab 25
5	92.12.17	Pte	Neglect to the prejudice of good order and discipline (129 NDA)	At Baledoge, Somalia, failed to ensure his weapon was unloaded properly, resulting in an accidental discharge.	Guilty/\$900 fine.	93.01.07	LCol J.C.A. Mathieu	111 — tab 8
6	92.12.17	Cpl	Negligently performed a military duty (124 NDA)	As a medical assistant, failed to secure four morphine auto injectors adequately, thereby causing their loss.	Not indicated.	N/A.	N/A.	111 — tabs 14/15
7	92.12.29	Cpl	An act to the prejudice of good order and discipline (129 NDA)	Fabricated an untrue statement to cover up the firing of a warning shot.	Guilty/\$100 fine and Recorded Warning.	06.01.93	LCol J.C.A. Mathieu	111 — tab 29 90C — tab 13C

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
8	93.01.01	Capt	Struck a subordinate (95 NDA)	While on board HMCS Preserver, struck a subordinate.	Guilty/\$1,200 fine and Severe Reprimand.	93.01.25	Col J.S. Labbé	111 — tab 2
			Conduct to the prejudice of good order and discipline (129 NDA)	While on board HMCS Preserver, he fought with a subordinate.	Dismissed.			
9	93.01.04	MCpl	Negligently performed a military duty imposed on him (124 NDA)	At Belet Huen while cleaning his weapon, failed to ensure that his weapon was cleared, causing it to fire.	Guilty/\$1,500 fine	93.01.18	LCol J.C.A. Mathieu	111 — tab 7
10	93.01.04	Pte	Neglect to the prejudice of good order and discipline (129 NDA)	At Belet Huen, failed to handle his weapon properly, causing an accidental discharge.	Guilty/\$1,000 fine.	93.01.07	LCol J.C.A. Mathieu	111 — tab 31
11	93.01.06	Maj	Negligently performed a military duty imposed on him (124 NDA)	At Belet Huen, while preparing for patrol, failed to ensure that his weapon was cleared, causing it to fire.	Guilty/\$2,400 fine.	93.01.16	Col J.S. Labbé	111 — tab 26

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
12	93.01.08	Pte	Neglect to the prejudice of good order and discipline (129 NDA)	At Mogadishu, failed to load his weapon properly.	Guilty/\$500 fine.	93.01.22	LCol J.C.A. Mathieu	111 — tab 4
13	93.01.09	Pte	Negligently performed a military duty imposed on him (124 NDA)	While on escort duty, failed to ensure his weapon was on safety, thereby causing a negligent discharge.	Guilty/\$250 fine.	93.01.16	Maj G.S. Dawson	111 — tab 6
			Neglect to the prejudice of good order and discipline (129 NDA)	Failed to ensure that his personal weapon was on safety, thereby causing a negligent discharge.	Dismissed.			
14	93.01.11	Lt	Negligently performed a military duty imposed on him (124 NDA)	At Belet Huen while cleaning his pistol, failed to ensure that his weapon was cleared causing it to discharge wounding him in the left arm.	Guilty/\$1,400 fine.	93.06.25	Col J.S. Labbé	111 — tab 39
15	93.01.11	MCpl	Negligently performed a military duty imposed on him (124 NDA)	Failed to ensure that a pistol he was handling was clear, causing it to fire.	Guilty/\$200 fine.	93.02.12	LCol J.C.A. Mathieu	111 — tab 11

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./DND No.
16	93.01.15	Sgt	Disobeyed a lawful command of a superior officer (83 NDA)	A CF member was improperly dressed when he wore a baseball cap contrary to the orders given by his platoon commander.	Guilty/\$250 fine and reprimand.	93.01.26	LCol J.C.A. Mathieu	111 — tab 5
			An act to the prejudice of good order and discipline (129 NDA)	A CF member mixed a military uniform with civilian clothing by wearing a baseball cap.	Dismissed.			.
17	93.01.18	MCpl	Behaved with contempt toward a superior officer (85 NDA)	Behaved in a contemptuous manner toward a captain by waving his arm in the air as if to brush him off, stating, "I do not have to wait for you either sir."	Guilty/\$200 fine and reprimand.	93.01.26	LCol J.C.A. Mathieu	111 — tab 36
18	93.01.19	Cpl	Negligently performed a military duty imposed on him (124 NDA)	While serving with the CARBG, Somalia, failed to ensure his weapon was cleared after a vehicle search causing it to fire.	Guilty/\$1,300 fine.	93.01.29	LCol J.C.A. Mathieu	111 — tab 1

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
19	93.01.27	LCol	Negligently performed a military duty imposed on him (124 NDA)	While he was the Commanding Officer for CARBG, he issued orders to his subordinates to shoot looters leaving the Canadian compound and, by doing so, failed to observe the Canadian rules of engagement for Operation Deliverance while it was his duty to do so.	Acquitted/ Relieved of his command and transferred to LFC HQ on 93.09.17. The prosecution's appeal was allowed and a second court martial was ordered. Second court martial — acquitted.	N/A	LCol J.S.M.D. Mercier	DND 093734 and 90 C — tab 13 C
20	93.02.01	Pte	Conduct to the prejudice of good order and discipline (129 NDA) Drunkenness (97 NDA)	While drunk at the Intercontinental Hotel in Nairobi, a CF member struck a hotel security guard in the chest without any apparent reason. While on leave, a CF member was drunk at the Intercontinental Hotel in Nairobi.	Dismissed.	93.02.13	LCol J.C.A. Mathieu	111 — tab 10 Guilty/ 14 days detention.

Action No.	Incident Date.	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
21	93.02.03	Pte	Neglect to the prejudice of good order and discipline (129 NDA)	Failed to properly carry out the safety precautions for the C7 rifle before cleaning, thereby causing a round to be negligently fired.	Guilty/\$1,000 fine.	93.02.16	LCol J.C.A. Mathieu	DND 286059
22	93.02.10	Cpl	Drunkenness (97 NDA)	At Intercontinental Hotel, Nairobi, Kenya, was drunk.	Guilty of both offences/ 14 days detention.	93.02.16	LCol J.C.A. Mathieu	111 — tab 34
			Conduct to the prejudice of good order and discipline (129 NDA)	At the Florida 2000 Club, Nairobi, Kenya, broke a telephone booth window.				
23	93.02.15	Tpr	Neglect to the prejudice of good order and discipline (129 NDA)	Near the village of Raqso, Somalia, was wearing a green bandana, contrary to 3 Commando Standing Orders.	Guilty/ seven days extra work and drill.	93.02.23	Maj C.G. Magee	111 — tab 42
24	93.02.19	Tpr	Neglect to the prejudice of good order and discipline (129 NDA)	At village of Tree Cento, Somalia failed to properly complete the unload drill for the C7 rifle thereby causing a round to be negligently fired.	Guilty/\$900 fine.	93.02.24	LCol J.C.A. Mathieu	111 — tab 44

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
25	93.03.04	Capt	An offence punishable under section 130 of the NDA, that is to say, unlawfully causing of bodily harm, contrary to section 269 of the Criminal Code of Canada (130 NDA)	Unlawfully causing harm to Abdi Hamdure by authorizing the use of excessive force against Abdi Hamdure.	Acquitted ¹	N/A	N/A	DND 414592 DND 414647 90C — tab 13C
			Negligently performed a military duty imposed on him (124 NDA)	Authorized his subordinates to apprehend any persons trying to enter the Canadian compound and, by doing so, failed to instruct his subordinates adequately on the proper use of force according to the Canadian Rules of Engagement for Operation Deliverance.	At Marabaan, while handling a pistol, failed to ensure it was properly cleared, thereby causing it to fire.	Guilty/\$1,000 fine.	93.03.27	LCol J.C.A. Mathieu

1. Note that this CF member was also charged on August 5, 1993 with possession of a prohibited weapon (NDA, section 130, Criminal Code, section 90) and an act to the prejudice of good order and discipline (NDA, section 129). He pleaded guilty to both. Reprimand and \$3000 fine.

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
27	93.03.09	Cpl	Negligently performed a military duty imposed on him (124 NDA)	At Belet Huen, while cleaning his weapon, failed to ensure that his weapon was cleared, thereby causing it to fire.	Guilty/\$1,400 fine.	93.03.12	LCol J.C.A. Mathieu	111 – tab 28
28	93.03.10	Cpl	Negligently performed a military duty imposed on him (124 NDA)	At Belet Huen, Somalia, while cleaning his weapon, failed to ensure that it was properly cleared, thereby causing it to fire.	Guilty/\$500 fine.	93.03.15	LCol J.C.A. Mathieu	111 – tab 12
29	93.03.10	Cpl	Negligently performed a military duty imposed on him (124 NDA)	At Belet Huen, Somalia, while cleaning his weapon, failed to ensure that it was properly cleared, thereby causing it to fire.	Guilty/\$500 fine.	93.03.15	LCol J.C.A. Mathieu	NS 181900
30	93.03.11	Cpl	Negligently performed a military duty imposed on him (124 NDA)	While on sentry duty at the Canadian Engineer Camp, failed to ensure a 12-gauge shotgun was on safety, causing it to fire.	Guilty/\$1,000 fine.	93.03.20	LCol J.C.A. Mathieu	111 – tab 40

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
31	93.03.14	Cpl	Disobeyed a lawful command of a superior officer (83 NDA) Conduct to the prejudice of good order and discipline (129 NDA)	At Belet Huen, refused to remove a lean-to structure and relocate his accommodation to tentage, when ordered to by a captain. At Belet Huen, refused to carry out a legitimate order given to him by a captain.	Guilty/\$150 fine. Dismissed.	93.03.26	Maj B.J. Vanderveer	111 — tab 13
32	93.03.16	MCpl	An offence punishable under section 130 of the NDA, that is to say, murder, contrary to section 235(1) of the Criminal Code of Canada (130 NDA)	In the Canadian military compound did commit second degree murder of Somali detainee, Shidane Abukar Arone.	Found unfit to stand trial. Released from the CF.	N/A	N/A	DND 089599 DND 112097 90C — tab 13C, General Courts Martial

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
33	93.03.16	Pte	An offence punishable under section 130 of the NDA, that is to say, torture, contrary to section 269.1 of the Criminal Code of Canada (130 NDA)	In the Canadian military compound did torture a Somali detainee, Shidane Abukar Arone.	Acquitted on both charges. Prosecution's appeal to CMAC dismissed.	N/A	N/A	DND 096776 90C — tab 13C, General Courts Martial, CMAC 383, April 12, 1996
34	93.03.16	Sgt		Negligently performed a military duty imposed on him (124 NDA)	Failed to ensure that a Somali detainee, namely Shidane Abukar Arone, was safeguarded.		Stayed.	N/A
				An offence punishable under section 130 of the NDA, that is to say, torture, contrary to section 269.1 of the Criminal Code of Canada (130 NDA)	In the Canadian military compound did torture a Somali detainee, Shidane Abukar Arone.			DND 096778 90C — tab 13C, General Courts Martial, CMAC 374, May 16, 1995

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
			Negligently performed a military duty imposed on him (124 NDA)	Failed to ensure that a Somali detainee, namely Shidane Abukar Arone, was safeguarded.	Pleaded guilty/ 90 days imprisonment, education in rank. CMAC increased the sentence to one year imprisonment.			DND 023378 90C — tab 13C General Courts Martial, (1995), 35 C.R. (4th) 318 (CMAC)
35	93.03.16	Pte	An offence punishable under section 130 of the NDA, that is to say, murder, contrary to section 235(1) of the Criminal Code of Canada (130 NDA)	In the Canadian military compound did commit second degree murder of a Somali detainee, Shidane Abukar Arone.	Guilty of manslaughter and torture/five years' imprisonment and dismissal with disgrace. Appeals by both parties to CMAC denied. Leave to appeal to SCC denied.	N/A	N/A	In the Canadian military compound did torture a Somali detainee, Shidane Abukar Arone.

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
36	93.03.16	Capt	An offence punishable under section 130 of the NDA, that is to say, unlawfully causing bodily harm, contrary to section 269 of the Criminal Code of Canada (130 NDA)	In the Canadian military compound did unlawfully cause bodily harm to a Somali detainee, Shidane Abukar Arone.	Acquitted.	N/A	N/A	DND 412854 DND 415060 DND 092395 90C – tab 13C, General Court Martial, CMAC-390, July 4, 1996

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
37	93.03.16	Sgt	Negligently performed a military duty imposed on him (124 NDA)	While acting as 2 Commando Duty Officer, failed to remain awake as was his duty to do so.	Not guilty/ bypassed for promotion in 1995. Unit recommends promotion.	N/A	N/A	DND 415049 DND 415052 90C — tab 13C
			Negligently performed a military duty imposed on him (124 NDA)	Failed to intervene in the mistreatment of a Somali national in custody, Shidane Abukar Arone, as was his duty to do so.				
38	93.03.16	Maj	An offence punishable under section 130 of the NDA, that is to say, unlawfully causing bodily harm, contrary to section 269 of the Criminal Code of Canada (130 NDA)	Did unlawfully cause bodily harm to Shidane Abukar Arone.	Acquitted.	N/A	N/A	N 028319 90C — tab 13C, General Court Martial, CMAC - 376, May 27, 1996

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
			Negligently performed a military duty imposed on him (124 NDA)	While an officer commanding 2 Commando, failed to issue instructions to prevent the mistreatment of prisoners.	Guilty/severe reprimand and retention in CF without restriction. On appeal to CMAC sentence increased to three months imprisonment and dismissal from CF. Leave to appeal to SCC dismissed.			
39	93.03.26	Cpl (driver) Capt (senior passenger) WO (NCO i/c)	Careless driving	A vehicle accident involving a Bison vehicle and the Bailey bridge, which was caused by the vehicle being driven at an excessive speed.	Cpl – Recorded warning and administrative deduction of \$250. Capt — Reproof for neglect of duty. WO — Reproof for neglect of duty.	93.04.14	Col J.S. Labb�	DND 064878 DND 064879

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
40	93.03.28	Cpl	Used violence against a superior officer (84 NDA) Behaved with contempt toward a superior officer (85 NDA)	Hit the duty sergeant in the ribs with his left elbow. Said to the duty sergeant in a loud voice, while vigorously pointing his finger in his face, "You don't have the right to talk to me like that", or words to that effect.	Dismissed. Guilty/\$400 fine and 30 days suspension of leave.	93.03.31	Maj S. Moffat	111 — tab 18
41	93.04.02	Cpl	Drunkenness (97 NDA)	Acted in a discreditable fashion while drunk in Mombassa.	Guilty/\$500 fine reprimand and Recorded Warning	N/A	N/A	126 — tab 1
42	93.04.03	Cpl	Drunkenness (97 NDA)	At the Reef Hotel in Mombassa, Kenya was drunk and behaved in a disorderly manner bringing discredit on the Canadian Forces.	Dismissed.	93.04.09	Name unclear	111 — tab 21

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
			An act to the prejudice of good order and discipline (129 NDA)	At the Reef Hotel in Mombassa, Kenya, behaved in a disorderly manner by grabbing an officer's steak from his plate, taking a bite of it and then spitting it out.	Guilty/\$50 fine.			
43	93.04.05	Cpl	Negligently performed a military duty imposed on him (124 NDA)	Circumstances are not legible on the charge sheet.	Guilty/\$1,300 fine.	93.04.05	LCol J.C.A. Mathieu	111 — tab 41
44	93.04.05	Cpl	Drunkenness (97 NDA)	At Reef Hotel, Mombassa, Kenya, was in lobby of hotel drunk.	Not indicated.	93.04.12	Col K.R. Sorfleet	111 — tab 22
			Conduct to the prejudice of good order and discipline (129 NDA)	At Reef Hotel, Mombassa, Kenya, was in lobby of hotel, nude, bringing discredit to Canadian Forces.	Guilty/\$300 fine and reprimand.			

Action No.	Incident Date	Individual	(section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Book No./DND No.
45	93.04.14	Cpl	Conduct to the prejudice of good order and discipline (129 NDA)	At Camp Holland, Matabaan without authority or proper knowledge of the weapon did load a C-5 mounted gun on a Grizzly turret and while trying to unload it caused it to fire.	Guilty/\$500 fine.	93.05.10	LCol J.C.A. Mathieu	111 — tab 38
46	93.04.23	Pte	Neglect to the prejudice of good order and discipline (129 NDA)	At Belet Huen, Somalia, while on sentry failed to wear his fighting order.	Guilty/\$200 fine.	93.04.29	Maj J.D. Kyle	111 — tab 32
47	93.04.23	Cpl	Neglect to the prejudice of good order and discipline (129 NDA)	At Belet Huen, Somalia, while on sentry failed to wear his fighting order.	Not indicated.	N/A	LCol J.C.A. Mathieu	111 — tab 32 90C — tab 13C
48	93.05.03	MCpl	An offence punishable under section 130 of the NDA, that is to say, criminal negligence causing death contrary to section 220 of the Criminal Code of Canada (130 NDA)	Pulled the trigger of a rifle pointed at another person causing the death of a CF soldier.	Stayed.	N/A	N/A	DND 361499 90C — tab 13C, General Court Martial, CMAC — 373, April 10, 1995

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
			Negligently performed a military duty imposed on him (124 NDA)	While handling his rifle, failed to take proper precautions against unsafe discharge of that rifle, as it was his duty to do so.	Pleading guilty/ 120 days' imprisonment, includes reduction in rank. Appeal to CMAC dismissed. Recommended for retention in the CF without restriction.			
49	93.05.11	MCpl	Drunkenness (97 NDA)	At Kismayo was drunk.	Guilty/\$500 fine and reprimand. Suspension of leave for 30 days.	93.05.14	Maj W.G. Vogan	111 — tab 23

Action No.	Incident Date	Individual	Statement of Offence (section of National Defence Act)	Description	Findings/Response to Misconduct	Date of Award	Awarded by	Document Book No./ DND No.
50	93.05.25	MCpl	An act to the prejudice of good order and discipline (129 NDA)	Near the Old Port in Mogadishu, re-entered the confines of 1 Commando camp through the concertina wire fence.	Guilty/\$500 fine.	93.05.29	LCol J.C.A. Mathieu	111 — tab 3
			Drunkenness (97 NDA)	Near the Old Port in Mogadishu was drunk.	Dismissed.			
51	96.02.15 96.04.23 96.04.25 96.04.26 96.05	Cpl	An act to the prejudice of good order and discipline (129 NDA) [8 counts]	The charges related to a book that he published and media interviews that he provided that were critical of the military. He was also charged with leaving the Citadel against the orders of his superior. He had left to deliver documents to the Commission of Inquiry.	Pleaded guilty to five counts and found guilty on three counts.	97.02.22	Col G.L. Brais	118 — tabs 20, L, M
			Disobeyed an order of a superior (83 NDA)	Left the Citadel against the orders of his superior to deliver documents to the Commission of Inquiry.	Charge stayed.			

Note: In relation to Incident 99, the Inquiry is aware that Cmdr Caie was charged with wilfully making a false statement in a document, negligent performance of duty, and conduct to the prejudice of good order and discipline. He pleaded guilty to the second charge. The other two charges were withdrawn. Col Haswell was charged with committing an act to the prejudice of good order and discipline and attempted destruction of a government file. He was acquitted.

NOTES

1. Section 161 of the *National Defence Act* (NDA, R.S.C. 1985, Chapter N-5, as amended) provides, “Where a charge is laid against a person to whom this Part applies alleging that the person has committed a service offence, the charge shall forthwith be investigated in accordance with regulations made by the Governor in Council.” The *Queen’s Regulations and Orders* (QR&O) 107.04 confirms the requirement for an investigation of a charge. QR&O 107.03 advises that an investigation should also be conducted before a charge is laid.
2. QR&O 21.46
3. See Annex A to this chapter, Somalia-Related Incidents.
4. In some cases, summary investigations must be ordered. However, in general, commanding officers can order a summary investigation where they require to be informed on “any matter connected with [their] command...base, unit or element or affecting any officer or non-commissioned member under [the commanding officer’s] command.” QR&O 21.01(3) Summary investigations can thus be used to investigate possible misconduct by an individual or systemic problems. Canadian Forces Administrative Order (CFAO) 21-9 sets out detailed guidelines on how to conduct summary investigations, including terms of reference and the briefing of the person conducting the summary investigation, administration of summary investigations, time limits within which reports should be filed, review, and so on.
5. The first eight incidents are 11, 24, 28, 35, 39, 45, 51, and 55 (see Annex A, Somalia-Related Incidents). In the 27 cases referred to in the text, the Inquiry received no record of any investigation; however, we assume that some kind of investigation did take place, since in 26 cases charges were laid, and the NDA and regulations require an investigation when charges are laid (NDA, section 161 and QR&O 107.04). These cases were incidents 1, 3, 4, 5, 6, 7, 9, 14, 15, 16, 17, 18, 19, 21, 22, 23, 37, 38, 41, 44, 48, 56, 57, 58, 59, and 62. The 27th case that was likely investigated was incident 61 (March 14, 1993), an aircraft accident. Flight safety investigations are required by the regulations in these circumstances.
6. For example, a summary investigation was inappropriate given the circumstances of the March 4th incident. See the conclusions of Military Police Report, Document book 48A, tab 6, p. 3/5, and the discussion later in this chapter and in Chapter 38, earlier in this volume.
7. The references are to incidents 33, 2, 8, 13, 26, 30, 31, 20, 42, 43, and 12 respectively. The incidents occurring before March 16, 1993 that were not investigated are as follows: 2, 8, 10, 12, 13, 20, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 40, 42, 43, 46, 47, 49, 50, 52, 53, 54, and 60 (see Annex A).
8. Incidents 12, 20, 25, 27, 29, 33, 34, 40, 50, 52, and 53 (see Annex A).
9. Incidents 10 and 36 were investigated within a few months, and incidents 2, 8, 13, 26, 30, 31, 32, 42, 43, 46, 47, 49, 54, and 60 were investigated eventually (see Annex A).
10. Incidents 2, 8, 13, 30, 31, 32, 54, and 60 (see Annex A).
11. Although there were neither adequate numbers of nor adequately experienced Military Police in theatre to deal with anything other than the most minor incidents, commanding officers could have called for additional MP from NDHQ, as was eventually arranged in May 1993.

12. In fact, in Canada, even minor investigations were normally conducted by second-line MP (MP attached to the base, as opposed to the unit, CAR). See "Operation Deliverance After Action Report — Military Police Operations", May 17, 1994, Document book 24, tab 7, p. 5.
13. In the After Action Report, Maj Wilson, a security officer, notes that MP were also involved in military confinement and police duties but, significantly, he notes that limited police duties were performed, because "Most incidents were viewed by senior commanders as issues which would be dealt with by other than an MP investigation." See "Operation Deliverance After Action Report — Military Police Operations", p. 6.
14. Responsibility for custody of detainees was handed over to 2 Commando.
15. Incident 55 (see Annex A). Message, DCDS Tasking Order, 152301Z Apr 93, "MP Investigation — Alleged use of excessive force, Belet Uen, 4 Mar 93", Document book 48B, tab 20.
16. Memorandum, "MP Investigation — Somalia, Alleged Use of Excessive Force", April 26, 1993, Document book 48B, tab 20. The investigations into the incident of March 4, 1993, and possible cover-up were carried out by different teams but reported in the same MP report.
17. The unit consisted of Maj Wilson, MWO Gosse, Sgt Barrow, Sgt Dallaire, and Sgt Gipp. See Annex A, Somalia-Related Incidents, MP investigations ordered in May and June 1993 for incidents occurring before May 1993.
18. Incident 70: a corporal acted in a discreditable fashion while drunk in Mombassa (see Annex A).
19. DND, "Brief for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia: Military Justice", June 1995, p. 11.
20. *Security Orders for the Department of National Defence and the Canadian Forces, Military Police Procedures (1991)*, A-SJ-100-004/AG-000, vol. 4, p. 15-1-1.
21. QR&O 21.43 and 21.46. Investigations are also required in the following circumstances:
 - (a) where there is a claim by or against the Crown (21.21),
 - (b) missing or absent officers and non-commissioned members (non-voluntary and not due to action) (21.41),
 - (c) illegal absence of longer than 14 days (21.43),
 - (d) absence due to enemy action (21.44),
 - (e) death otherwise than as a result of wounds received in action, injury a medical officer certifies is serious, likely to cause a permanent disability or suspected to be the result of his own wilful act (21.46),
 - (f) aircraft accidents (21.56(3)),
 - (g) damage to property caused by fire or explosion (21.61), and
 - (h) missing classified material (21.75).

Although there are inconsistent statements in QR&O 107.02 and 107.03 about the requirement to investigate an alleged offence ("shall" versus "should"), it appears that an investigation is required only after a charge is laid. See discussion in Volume 1, Chapter 7, Military Justice, under the duty to investigate.
22. See "Operation Deliverance After Action Report—Military Police Operations", p. 2/19: "The Commander and some senior staff did not feel MP investigations were required in an operational theatre and that most issues could be adequately dealt with by CO's/unit investigation, summary investigation or board of inquiry."
23. Incident 42 and incident 63 (see Annex A).

24. This investigation is referred to in the MP reports of May and June 1993, although the Inquiry was not given a copy of a report prepared by regimental MP.
25. Testimony of CWO Jardine, Transcripts vol. 105, pp. 21084–21093; Maj Pommet, Transcripts vol. 107, pp. 21440–21483; and LCol Mathieu, Transcripts vol. 174, pp. 35950–35962.
26. Document book 38, tab G, DND 014854.
27. Document book 38, tab B, DND 014834.
28. CFAO 21-9, paragraph 13, note 2, Annex A to CFAO 21-9.
29. If a case involves a claim by or against the Crown, a board of inquiry or summary investigation must be held (QR&O 21.19 and 21.21). Note that it may be possible to interpret these articles as permissive, not mandatory. Boards of inquiry or summary investigations are also required in the following cases:
 - (a) missing or absent officers and non-commissioned members (non-voluntary and not due to action) (QR&O 21.41),
 - (b) illegal absence of longer than 14 days (QR&O 21.43),
 - (c) absence due to enemy action (QR&O 21.44),
 - (d) death otherwise than as a result of wounds received in action, injury medical officer certifies is serious, likely to cause a permanent disability or suspected to be the result of his own wilful act. (QR&O 21.46),
 - (e) aircraft accidents (QR&O 21.56),
 - (f) damage to property caused by fire or explosion (QR&O 21.61), and
 - (g) missing classified material (QR&O 21.75).
30. Incidents 24, 28, 43 and 63 respectively. Summary investigations were also held in incidents 4, 10, 11, 35, 36, 39, 51, 55, 64, 66, and 83 (see Annex A).
31. These cases are all examples of the types of incidents requiring investigation by a board of inquiry or a summary investigation as described in the text at notes 28 and 29:
 - (a) Incidents 8, 13, 31, 32;
 - (b) Incident 12;
 - (c) Incident 34;
 - (d) Incident 42;
 - (e) Incident 46;
 - (f) Incident 47;
 - (g) Incident 49; and
 - (h) Incident 80 (see Annex A).
32. Note that incident 49 was investigated by Military Police again in 1994.
33. In war, 'house clearing' typically refers to operations to clear premises of the enemy. See, for example, testimony of Sgt MacAulay, Transcripts vol. 54, p. 10750.
34. Travelling with Col Labb   were LCol Mathieu, Cmdr Williams, Cpl Richardson-Smith, Capt Mair, and Cpl Polauskas. See testimony of Col Labb  , Transcripts vol. 163, p. 33206; and Cpl Richardson-Smith, Transcripts vol. 109, p. 21946.
35. Testimony of Col Labb  , Transcripts vol. 163, pp. 33212 and 33222.
36. Section 77 of the NDA makes it an offence to steal any money or property that has been left exposed or unprotected in consequence of warlike operations, or take otherwise than for the public service any money or property abandoned by the enemy. The 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, article 33, paragraph 2, prohibits any act of pillage. It is not clear whether, under international law, the Convention was applicable to the UNITAF operation. However, it seems quite clear that at least the officers of CARBG were

advised to comply with the principles of the 1949 Geneva Convention in Somalia; see James M. Simpson, *Law Applicable to Canadian Forces in Somalia 1992/93*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997).

37. Incidents 3, 6, 14, 15, 16, 18, 19, 20, 23, 38, 48, 56, 57, 58, 59, 69, 76, and 83. Two of these incidents involved two CF members in each case. Incidents 40 and 88 involved the accidental discharge of crew-served weapons (see Annex A).
38. The Board of Inquiry into the leadership, discipline, operations, actions and procedures of the CARBG remarked that accidental discharges occurred “to an unacceptable degree”; see Annex C to the Narrative, Board of Inquiry (CARBG), Phase I, vol. XI, p. C-5.
39. See Chapter 38 for details underlying the following analysis.
40. Document book 48AE, tab 7; and testimony of Maj Armstrong, Transcripts vol. 178, pp. 36795–36796.
41. Incident 46 (see Annex A).
42. The Commander was in fact asked for compensation by the elders of the tribe of the person killed: letter, Ugas Ali Ugas Hassan Ugas Rage to Commander of the Canadian Troops, May 31, 1993, DND 064267. The request was denied on the grounds that the CF soldiers “were forced to respond to a life threatening situation in accordance with UNITAF and Canadian Forces Rules of Engagement”: letter, Col Labb   to Ugas Ali Ugas Hassan Ugas Rage, June 2, 1993, DND 064266.
43. QR&O 21.19 and 21.21.
44. These incidents were the illegal use of military pyrotechnics at a party at the junior ranks’ mess at CFB Petawawa; the setting alight of a car belonging to the 2 Commando duty officer; and the setting off of illegally held pyrotechnics and ammunition during a party in Algonquin Park by members of 2 Commando. These are described in more detail in Volume 2, Chapter 18, Discipline.
45. This was the case in the investigation of a 1 Commando initiation party that took place at CFB Petawawa in August 1992, as well as an investigation into a break-in and vandalism of a room at CFB Petawawa in May 1992.
46. Military Police Report, Preface, Memorandum 2106-10-4 VCDS, March 11, 1994, DGS 855-05-94, Document book 40, tab A3, p. 1/3.
47. Testimony of Maj Buonamici, Transcripts vol. 176, p. 36271. For further discussion of this issue, see Chapter 38.
48. Incident 54 (see Annex A).
49. Cross-examination of Gen Boyle by Mr. Bright, Transcripts vol. 91, pp. 17709–17718.
50. Testimony of Gen Boyle, Transcripts vol. 91, p. 17713.
51. Incidents 49 and 46 (see Annex A). Note that no written statements were obtained from Somali witnesses for the summary investigation of the shootings at the International Committee of the Red Cross compound (incident 64), even though it would have been relatively easy to locate the Somalis employed by the ICRC.
52. Incident 13 (see Annex A).
53. Incident 32 (see Annex A).
54. Incident 80 (see Annex A).
55. Incident 46 (see Annex A).

56. Document book 52A, tab 25, DND 017794, DND 12701. See also Document book 60A, tab 12. The contradictions between the statements and the briefings and the questions left unanswered included the following:
- Statements indicate that the mission of the soldiers was to protect the bridge; the briefing to the Minister indicates it was to prevent passage of the crowd.
 - Statements describe crowd throwing rocks; the briefing to Minister suggests that the soldiers feared that the rocks were grenades.
 - MP investigator was told that there was no unit investigation of the incident; the briefing to the Minister states that there was.
 - Col Labb   concluded that the CF soldiers were blameless; on what basis?
 - On what basis was Col Labb   able to conclude that the soldiers had acted within ROE?
57. For example, in incident 32 (see Annex A), involving instructions to destroy photos of detainees, potential witnesses (not suspects in relation to this incident) were cautioned on their right to silence on the basis that they were suspects in a similar incident.
58. Incident 43 (see Annex A).
59. Document book 48A, tab 6, section 9, p. 9-3.
60. Incident 12 (see Annex A).
61. Incident 34 (see Annex A).
62. Testimony of Maj Philippe, Transcripts vol. 159, February 5, 1997, pp. 32299–32300, 32434–32435, 32439, vol. 160, p. 32678, and vol. 158, p. 32463. Maj Philippe testified that he felt himself to be in a potential conflict of interest on several occasions. For example, while he was providing advice to Col Labb  , Col Labb   asked him to provide what amounted essentially to legal counsel to members of the Reconnaissance Platoon. In addition, the Military Police asked Maj Philippe for assistance.
63. Document book 129, part A, tab 2, p. 3 is a message dated April 15, 1993, saying that two legal officers from the defence group were required, referring to them as the “legal team deployed [independently] under authority of JAG”. This is a revised version of a document in Document book 38Y, tab 29, p. 3, which states that the “legal team forms part of investigating team deployed under authority of DCDS and will remain under DCDS comd.” This change is pursuant to Exhibit 388, DND 210388, a handwritten note saying that “Kirby Abbott will call to have message amended to read ‘JAG’ vs. ‘DCDS’, so as to read “legal team forms part of investigating team deployed under authority of JAG and will remain under JAG comd.”
- Recent regulatory changes may have resolved this confusion. The changes make it clear that the JAG has command over all officers and non-commissioned members posted to positions established within the office of the JAG. Furthermore, the changes clearly state that the duties of a legal officer are determined by, or under the authority of, the JAG. Legal officers performing these duties are not subject to the command of officers who are not legal officers: QR&O (Amendment List 1-97), section 2 — Office of the Judge Advocate General, 4.081 (2).
64. Office of the Judge Advocate General (JAG), “Lessons Learned — OP Deliverance”, February 16, 1993.
65. See also memorandum, LCdr MacDougall, D Law/I2, to D Law/I, reporting on her activities as a legal officer in the former Yugoslavia, June 22, 1993, p. 2, DND 338900.

66. The importance of lawyers in theatre has been recognized in a number of other jurisdictions. In the U.S. military, for example, 'operational lawyers', as they are called, were closely involved in high-level decision making in an advisory capacity, assisting commanders in determining the legality of various options available to them in a given situation. One U.S. commentator notes that possible responses to a commander's illegal actions include
1. advising the commander of the potential illegality and the conflict with Army interests,
 2. asking the commander to reconsider,
 3. requesting permission to seek a separate legal opinion or decision on the matter,
 4. referring the matter to the legal authority in the next higher command.
- See Colonel Fennis F. Coupe, "Commanders, Staff Judge Advocates, and the Army Client", *The Army Lawyer* (November 1989), pp. 4-10.
67. LCol Watkin's diary, "Personal Involvement in Somalia Incidents", Document book 90, tab 9, p. 1, states that he was "astounded that he [Maj Philippe] had not provided any briefings in theatre to the Cdn Ab Regt and that they had appeared to rebuff his attempts to provide any advice on other than routine per/discipline problems". Maj Philippe stated that he had offered to provide briefings on the ROE in theatre but his offers were not accepted: Transcripts vol. 160, p. 32624. A handwritten memorandum from Capt Blair, Document book 90D, tab 2, p. 3, refers to the legal officer's repeated offers, in theatre, of guidance with respect to the ROE.
68. Testimony of Maj Philippe, Transcripts vol. 160, pp. 32544 and following, 32547 and following, 32575 and following.
69. Testimony of VAdm Murray, Transcripts vol. 152, p. 31039, and vol. 155, pp. 31670, 31697.
70. See Annex B to this chapter, Disciplinary and Administrative Action Taken.
71. Actions 33, 34, 36, and 37 (see Annex B).
72. R. v. Brocklebank, Court Martial Appeal Court (C.M.A.C.), April 2, 1996.
73. R. v. Brocklebank, C.M.A.C., April 2, 1996, p. 21.
74. QR&O 4.02.
75. QR&O 4.02.
76. NDA, section 92.
77. NDA, section 129.
78. NDA, section 93.
79. The charges and counts were as follows:
- | Charge #1 | Description | Disposition |
|--|---|--------------------|
| Count | | |
| First Count
section 129 | Conduct Prejudicial to Good Order
and Discipline
Interview on <i>Enjeux</i> | not guilty |
| Second Count
section 129
(alternative to #3) | Conduct Prejudicial to Good Order...
Interview for <i>Journal de Québec</i> | not guilty |
| Third Count
section 129
(alternative to #2) | Conduct Prejudicial to Good Order...
expressing opinions without permission
for publication in <i>Journal de Québec</i> | not guilty |

Fourth Count section 129	Conduct Prejudicial to Good Order... answering questions without permission on CKVL	guilty plea
Fifth Count section 129	Conduct Prejudicial to Good Order... answering questions without permission on CHRC	guilty plea
Sixth Count section 83 (alternative to #7)	Disobeying the order of a superior left the Citadel notwithstanding order to remain on premises	stayed
Seventh Count section 129 (alternative to #6)	Act Prejudicial to Good Order.... left the Citadel in contravention of order given to him to stay on premises	guilty plea
Charge #2		
First Count section 129	Conduct Prejudicial to Good Order... publicly criticized government and departmental decisions and policies in book he published	guilty plea
Second Count section 129	Conduct Prejudicial to Good Order... made statements tending to discredit his superiors and the CF in book he published	guilty plea
80. Document book 118B, tab 20L-M.		
81. Letter, Gen Boyle, Chief of the Defence Staff (CDS), to Chairman of the Commission of Inquiry, September 6, 1996.		
82. Statement by the Chairman of the Commission of Inquiry, Transcripts vol. 66, p. 12826 and following.		
83. CBC Radio, <i>As it Happens</i> , April 30, 1996.		
84. R. v. Génereux, [1992] 1 S.C.R. 259, 70 C.C.C. (3d) 1, pp. 34, 35.		
85. The role of convening authorities in courts martial is discussed more fully in NDA, section 165.1 and QR&O 111.051(4).		
86. QR&O 106.10(2). Charge sheets are signed by the commanding officer, although the CO does not lay the charge.		
87. General Court Martial of Kyle Brown, October 18–21, 1993, vol. 2, p. 239.		
88. General Court Martial of Kyle Brown, vol. 2, p. 242.		
89. General Court Martial of Kyle Brown, vol. 2, p. 242.		
90. General Court Martial of Kyle Brown, vol. 2, p. 242.		
91. Legal brief addressing whether the actions of the commanding officer and/or the convening authority in the cases of Brown, Brocklebank, Boland and Matchee raised a reasonable apprehension of bias that was incompatible with their involvement in the laying of charges and convening of those courts martial (Document book 90, tab 5). The brief notes (p. 3/41) that in late April 1993, LCol Tinsley informed MGen Vernon that he had reservations about LCol Mathieu's role. The brief states (p. 5/41) that Capt Blair advised the DCDS and the CDS in "the strongest possible terms" that LCol Mathieu should be removed from the process immediately. The		

- brief states (p. 6/41) that the issue was discussed at a post-daily executive meeting. Following the execution of search warrants at LCol Mathieu's residence, LCol Tinsley spoke with MGen Vernon with regard to the propriety of LCol Mathieu staying on as commanding officer of the Canadian Airborne Regiment (p. 10/41). MGen Vernon said he was not prepared to do anything that would show a lack of faith in LCol Mathieu or prejudge him; therefore he would not consider action to remove him from that position.
92. Legal Brief on Reasonable Apprehension of Bias (re Mathieu and Vernon), undated, Document book 90, tab 5, p. 5/41. On May 13, 1993, Capt Blair advised the DCDS and the CDS in "the strongest possible terms" that LCol Mathieu should be removed from the process immediately.
93. R. v. Brown (1995), 35 C.R. (4th) 318 (C.M.A.C.) at 330.
94. Correspondence, Capt W.A. Reed, DJAG, to JAG, November 5, 1993, Document book 90A, tab 25.
95. Correspondence, Capt W.A. Reed to JAG, November 5, 1993.
96. Memorandum, Capt Maybee, JAG Somalia co-ordinator, to MGen Boyle, October 26, 1993, Document book 90A, tab 15, discussing the options available to the CF regarding the general court martial of Pte Brown, p. 3, DND 428912.
97. Captain Teresa K. Hollingsworth, "Unlawful Command Influence", *The Air Force Law Review* (1996), p. 262.
98. Canadian Forces Personnel Applied Research Unit Report, "Mechanisms of Voice: Results of CF Focus Group Discussions", Sponsor Research Report 95-1 (October 1995), p. 20.
99. Ben Shalot, "Discipline", in *The Psychology of Conflict and Combat* (New York: Praeger, 1988), p. 128.
100. Compare this with the civilian system, in which police can lay charges or, alternatively, a civilian complainant can do so. If the prosecution subsequently withdraws or stays those charges, this is done in a public forum. This transparent process allows the issues to be placed before the public and, ultimately, holds the individuals involved accountable.
101. We acknowledge, however, that Military Police have major tactical responsibilities. In discharging these tactical responsibilities, they must be part of the operational chain of command.
102. In fact, the unit does not seem to keep such statistics. When asked specifically about this, the senior persons at the MP Platoon, CFB Petawawa, indicated that such statistics were not kept and the only way they would learn about the results of their investigations was through happenstance.
103. Incident 100 (see Annex A).
104. During events in Somalia, daily executive meetings lasted as long as 90 minutes. Commission of Inquiry, Meeting with Judge Advocate General, April 20, 1995, per BGen Boutet, p. 21.
105. Minutes, daily executive meeting (DEM), July 9, 1993, Document book 127A, tab 1.
106. Handwritten note, VCDS to CDS, September 20, 1993, Document book 129, part A, tab 5, DND 020915. See also correspondence from Patrick McCann, counsel for Pte Brown, to LCol Tinsley, Assistant JAG, requesting that prosecution of his client be moved to civilian courts, September 15, 1993, Document Book 129, part A, tab 5, DND 020916-020918.

107. Memorandum, office of the JAG, November 28, 1995, DND 432200.
108. R. v. Généreux, [1992] 1 S.C.R. 259 at 293.
109. Section 2 of the National Defence Act defines "service offence" as "an offence under this Act, the Criminal Code or any other Act of Parliament, committed by a person while subject to the Code of Service Discipline". For an analysis of the offences contained in the NDA, sections 73 to 130 and 132, see QR&O, chapter 103, "Service Offences".
110. NDA, section 2.
111. NDA, section 88, section 85, and section 74, respectively.
112. The offences referred to in QR&O 108.31(2) include those provided for in the following sections of the *National Defence Act*:
73 (offences by commanders when in action),
74 (offences by any person in presence of enemy),
75 (offences related to security),
76 (offences related to prisoners of war),
77 (offences related to operations),
78 (offence of being spy),
79 (mutiny with violence),
80 (mutiny without violence),
81 (offences related to mutiny),
82 (advocating governmental change by force),
84 (striking or offering violence to a superior officer, but only where striking or using violence to a superior officer is charged),
88 (desertion),
92 (scandalous conduct by officers),
94 (traitorous or disloyal utterances),
98 (malingering or maiming, but (a) and (b) only where on active service or under orders for active service),
99 (detaining unnecessarily or failing to bring up for investigation),
104 (losing, stranding or hazarding vessels),
105 (offences in relation to convoys),
107 (wrongful acts in relation to aircraft or aircraft material), but only where the act or omission is wilful),
111(1) (a) and (b) (improper driving of vehicles),
113 (causing fires, but only where the act or omission causes fire or is wilful),
114 (stealing),
115 (receiving),
119 (false evidence),
128 (conspiracy),
130 (service trial of civil offences), and
132 (offences under law applicable outside Canada).
113. Except where the conduct is of a type now covered by QR&O 108.31(2).
114. QR&O 4.01 (officers) and 5.01 (non-commissioned members).
115. For example, the two regimental MP accompanying the CARBG to Somalia served as bodyguards for LCol Mathieu.
116. QR&O 106.01.

117. For example, the federal Crown Counsel Policy Manual (Minister of Justice and Attorney General of Canada, January 1993) provides that, in addition to sufficiency of evidence, Crown counsel should always consider whether the public interest requires a prosecution. Public interest factors that may arise on the facts of a particular case include
- (a) the seriousness or triviality of the alleged offence;
 - (b) significant mitigating or aggravating circumstances;
 - (c) the age, intelligence, physical or mental health or infirmity of the accused;
 - (d) the accused's background;
 - (e) the degree of staleness of the alleged offence;
 - (f) the accused's alleged degree of responsibility for the offence;
 - (g) the likely effect of the prosecution on public order and morale or on public confidence in the administration of justice;
 - (h) whether prosecuting would be perceived as counter-productive, for example, by bringing the administration of justice into disrepute;
 - (i) the availability and appropriateness of alternatives to prosecution;
 - (j) the prevalence of the alleged offence in the community and the need for general and specific deterrence;
 - (k) whether the consequences of a prosecution or conviction would be disproportionately harsh or oppressive;
 - (l) whether the alleged offence is of considerable public concern;
 - (m) the entitlement of any person or body to criminal compensation, reparation or forfeiture if prosecution occurs;
 - (n) the attitude of the victim of the alleged offence to a prosecution;
 - (o) the likely length and expense of a trial, and the resources available to conduct the proceedings;
 - (p) whether the accused agrees to co-operate in the investigation or prosecution of others, or the extent to which the accused has already done so;
 - (q) the likely sentence in the event of a conviction; and
 - (r) whether prosecuting would require or cause the disclosure of information that would be injurious to international relations, national defence, national security or that should not be disclosed in the public interest.

The application and weight to be given to these and other relevant factors depend on the circumstances of each case.

The proper decision in many cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution. Mitigating factors present in a particular case can then be taken into account by the court in the event of a conviction.

The guidelines also outline irrelevant criteria, including

- (a) the race, national or ethnic origin, colour, religion, sex, sexual orientation, political associations, activities or beliefs of the accused or any other person involved in the investigation;
- (b) Crown counsel's personal feelings about the accused or the victim;
- (c) possible political advantage or disadvantage to the government or any political group or party; and
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

118. The commanding officer, the officer commanding a command, and the Chief of the Defence Staff.
119. M.L. Friedland, *Controlling Misconduct in the Military*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997), p. 67.
120. *Statutory Instruments Regulations*, C.R.C., Chapter 1509, section 15(1).



THE MEFLOQUINE ISSUE

Mefloquine is a relatively new anti-malarial drug, first made generally available to the Canadian public in 1993.¹ It is used both to prevent malaria (that is, as a prophylactic) and to treat malaria. Mefloquine is used in areas where the local strains of malaria have developed a resistance to other anti-malarial drugs. Somalia is one such area.

The suggestion was made to us that mefloquine caused severe side effects, including abnormal and violent behaviour, among some Canadian Forces (CF) personnel in Somalia. We were not able to explore fully the possible impact of mefloquine. This would have required additional hearings dedicated specifically to the issue, which time did not permit. However, we report here our general findings about mefloquine and its possible impact on operations in Somalia. Readers will see readily that further investigation is warranted before any firm conclusions about the role of mefloquine can be drawn.

THE NEED FOR ANTI-MALARIAL MEDICATION

Anti-malarial medication was clearly necessary for Canadian troops deployed to Somalia. There is a year-round risk of malaria in Somalia.

A recent U.S. medical journal article reported 48 cases of malaria among U.S. forces stationed in Somalia over the entire duration of the U.S. deployment.² In addition, the malaria produced by *P. falciparum* was considered more severe than some other forms of malaria and therefore warranted strong precautions.³

A September 1992 memorandum from DND's Director, Health Protection and Promotion, entitled "Preventive Medicine Recommendations for Somalia", also discussed the malaria risk. The memorandum recommended the weekly use of mefloquine:

All of Somalia is considered malarious with *[P.] falciparum* predominating and chloroquine resistance reported. Mogadishu is said to present a lower but still present risk.... Mefloquine weekly is recommended. DHPP 2 hereby provides blanket approval for mefloquine to be provided to personnel deploying on this mission.... Personnel for whom mefloquine is medically contraindicated as per Ref D, e.g., pilots, can be given doxycycline 100 milligrams per day.⁴

Most CF members stationed in Somalia in 1992 and 1993 were prescribed mefloquine. However, some CF pilots and divers received another anti-malarial drug, doxycycline, because mefloquine was thought to cause dizziness and loss of fine motor control in some users. The post-deployment report of the HMCS *Preserver*, for example, stated that all aircrew on active flying duties used doxycycline.⁵ The report also noted that several CF members who suffered adverse effects from taking mefloquine were switched to doxycycline.

CF members began taking mefloquine one week before deployment and continued to take it weekly during deployment and for four weeks after deployment.⁶ They received a preventive (prophylactic) dose of 250 milligrams once a week. A message of December 25, 1992, confirmed that 3,000 mefloquine tablets were issued on December 23, 1992, and that a further 24,000 tablets were on order.⁷

Mefloquine was taken once a week, on Wednesdays. A standing operating procedure dated November 11, 1992, stated:

Malaria prophylaxis will be provided by the use of once weekly dosing with Mefloquine. The UMS [Unit Medical Services] staff will supervise the distr of this med, and will likely occur at the same time and place each week; i.e. the Wed noon meal. A nom roll will be used to pos check distr.⁸

However, a later standing operating procedure, dated January 2, 1993, stated that "All pers will take the anti-malaria pill mefloquine every Friday."⁹ Still, it appears from the limited information before us that mefloquine was normally taken on Wednesdays. Later in this chapter we discuss the significance of the day on which mefloquine was taken.

WHO RAISED THE CONCERN ABOUT THE POSSIBLE IMPACT OF MEFLOQUINE ON BEHAVIOUR?

The first public suggestion that mefloquine might have caused, or contributed to, abnormal behaviour in Somalia appears to have been made by Maj Barry Armstrong, the officer commanding the surgical section of the medical unit in Somalia. Speaking to the Canadian Forces Medical Services Group Conference, Operational Medicine, October 26, 1993, Maj Armstrong argued as follows:

I believe that the UN's failures in Somalia are rather exceptional, considering previous peacekeeping successes. I believe that a simple reason may exist. Canadian and American troops may have been impaired by the use of mefloquine....

Mefloquine is well known to have neurologic side effects. The manufacturer's literature states that reactions are rare, but include convulsions, psychosis, nightmares, dizziness, headache, confusion, anxiety and depression. There are over 100 case reports of such serious reactions requiring hospitalization. From the medical literature, it seems that such reactions occur in 1 per 2,000 people when prophylactic doses are given, or up to 1 per 200 when stronger, treatment doses are given. [Treatment doses are given only to those who contract malaria; no suggestion has been made that any non-infected CF member in Somalia received the stronger treatment dose.]

Less severe reactions (not requiring hospitalization) are more common, but the incidence is not known. We had one psychiatric hospitalization in Belet [H]uen, which did not respond to the usual treatment of battle stress. The diagnosis made by psychiatrists at NDMC [National Defence Medical Centre], after he was evacuated, was an organic brain syndrome, probably due to mefloquine. The suicide attempt in theatre may also be mefloquine related.¹⁰

There are three of us presenting on Somalia today. Two of us had minor neuropsychiatric problems which occurred regularly in the 24 to 48 hours after our weekly mefloquine doses. If there are two of us, these reactions aren't so 'rare'. Burke in *The Lancet*, June 1993, writes, "As a demographer with a quarter of a century's experience, I know that if I encounter finite numbers of a supposedly rare occurrence, the true rate is higher." He goes on to recommend alternatives to mefloquine.

In 1992, mefloquine was the best choice as an anti-malarial. However, we realized some of the risks and did not prescribe this medication for pilots. The U.S. military has also rejected mefloquine use for their aircrew, because of the neuropsychiatric side effects.

The mechanism of mefloquine effects on the brain (like its effects on malaria) is unknown. However, it is structurally similar to quinine and quinidine. Mefloquine can cause additive effects with these drugs. Quinine and quinidine are known to be blockers of the fast sodium channel. This sodium channel is found on the cell membrane of nerve cells, and is activated early when nerve cells fire. Specifically, it is believed that agents similar to mefloquine block the sodium channel by locking closed the 'inactivation gate' in the channel. Some sodium channel blockers, such as Dilantin (diphenylhydantoin), have been clearly shown to have adverse effects on cognition. According to my literature review, these neuropsychiatric tests have not been done on any subjects taking mefloquine.

Further, it should be better known that the mefloquine malaria pills taken by the Canadian Forces are 10 per cent stronger than those given to the American Forces, despite both being labelled as 250 milligrams. (250 milligrams of mefloquine base in the Basel manufactured pills, versus 250 milligrams of mefloquine salt in the U.S. produced pills).

I believe that mefloquine causes sub-clinical adverse effects on cognition. The usual soldier taking the drug is not aware of any problems. Nevertheless, his thinking could be impaired. Like many people tipsy after 2 or 3 alcohol-based drinks, he would not recognize that his judgement was diminished. He would not recognize this because the adverse effect is on cognition, including impaired insight. Like the impaired driver who feels fine, our soldier would feel fine, despite his impairment....

Definitive proof regarding the effects of mefloquine on thinking would require a randomized, double-blind, placebo-controlled study. The measurements should be taken by neuropsychiatric testing (the same techniques used to prove the adverse neurologic effects of low-dose alcohol). Such a study would be much less expensive than the costs of flying M1A1 tanks to Mogadishu. The real difficulty in Somalia might be drug side-effects. It would be wiser to conduct such a study of mefloquine, than to simply abandon the concept of international peace-making.

On October 6, 1994, John Cummins, a member of Parliament, issued a press release relating to the death of Shidane Arone.¹¹ The press release, although referring (apparently mistakenly) to a drug to combat cholera, not malaria, raised the possibility that the drug (presumably mefloquine) may have contributed to the violent behaviour of MCpl Matchee:

Another element of this unfortunate affair which has not been addressed was that every Thursday troops in Somalia were given an experimental drug to combat cholera.¹² The day the drug was administered in Somalia was known as "psycho Thursday". What effect this drug and the beer he consumed may have had on the behaviour of Corporal Matchee has never been discussed.

Mr. Cummins raised the same issue later that month in the House of Commons:

[T]he minister and the military establishment ignored the well known effect of Mefloquine, a malaria drug administered to Canadian troops in Somalia. Side effects include violent dreams, hallucinations, confusion, anxiety and mental depression. Mefloquine could have precipitated the murder of the prisoner and Master Corporal Matchee's attempted suicide.¹³

In a letter dated October 26, 1994, to the Minister of National Defence, Mr. Cummins restated his concern about mefloquine:

The Department should have known of the problems associated with the combination of mefloquine and alcohol prior to Somali[a], and certainly would have known afterwards but has so far failed to conduct either field or clinical research....

I would ask that you initiate the process for the release from military detention of Trooper Kyle Brown pending an investigation.¹⁴

The Minister of National Defence replied to the letter from Mr. Cummins on December 11, 1994.¹⁵ The Minister's letter stated that mefloquine "was, at the time of deployment to Somalia, and continues to be, the drug of choice for the prevention of malaria in Africa." The Minister also noted that recent CF use of mefloquine in Rwanda showed that side effects might occur in 10 to 20 per cent of users. These side effects included bad dreams and nausea. However, only three of 650 CF members in Rwanda had to be switched to another drug because of significant side effects from mefloquine.

The Minister's letter continued:

A close review of the relevant scientific literature does not indicate that mefloquine, when used to prevent malaria, impairs thinking or judgment.... On specific questioning, CF medical authorities in Rwanda have not expressed any particular concern about mefloquine-related effects on thinking or behaviour among the CF units deployed in Rwanda; further, their operational commanders have not expressed any such concerns. ...

In summary, after careful review, the Department of National Defence believes that mefloquine did not play any significant role in the tragic events in Somalia.

Before he had received this reply from the Minister, Mr. Cummins made a formal Inquiry of the Ministry on November 14, 1994.¹⁶ The inquiry asked what field studies were undertaken or funded by the Department of National Defence into the possible adverse effects of mefloquine, including the impairment of judgement of CF personnel in Somalia and on their return to Canada. Mr. Cummins asked a similar question about possible studies relating to Canadian Forces in Rwanda. He also asked how much alcohol CF personnel were allowed to have daily in Somalia and Rwanda, what adjustments were made to the dosage of mefloquine as a result, and what advice was given to

persons required to take mefloquine who might be expected to use alcohol during their tour of duty.

The response by the Minister indicated that no studies had been undertaken into the possible adverse effects of mefloquine, and none were considered necessary. The Minister replied that the specific policy regarding the consumption of alcohol was left to the field commander who determined the amount of alcohol permitted per day during deployment. The reply stated that, in Somalia, members were not permitted any alcohol during the first six weeks of their deployment, following which each member was allowed two beers per day, except on special occasions where no restrictions were imposed — for example, a regimental birthday.

The Minister's reply also asserted that until quite recently, there was no scientific evidence that personnel taking mefloquine were at an enhanced risk of a serious adverse interaction when drinking alcohol. Further, the prescribing information for mefloquine did not at that time mention concern about such an interaction. Thus, when CF members were deployed to Somalia and Rwanda, the Minister believed that there was no evident need to warn those taking mefloquine about an interaction with alcohol. However, the Minister acknowledged that a 1995 Canadian medical journal reported a single case of a likely interaction between mefloquine and copious alcohol ingestion that resulted in a temporary psychotic state in the patient.¹⁷ The Minister maintained that this was the first reasonably documented reported case among the millions of persons who have taken mefloquine worldwide in the last decade, many of whom had likely consumed alcohol, even in substantial amounts. For this reason, the Minister argued that the risk of such an interaction would seem to be quite small.

The Minister did note that, in light of this medical journal report, the Surgeon General felt it prudent to caution members taking mefloquine specifically against the concurrent excessive use of alcohol. A direction to that effect was being prepared at the time.

THE ISSUES

Two main issues arise from the use of mefloquine by Canadian troops in Somalia:

1. What was known about mefloquine when it was prescribed in 1992–93 as an anti-malarial drug? Did the Department of National Defence (DND) prescribe it responsibly?
2. Given what is now known about mefloquine, could mefloquine have been responsible for, or could it have contributed to, any of the incidents being investigated by this Inquiry?

What was Known about the Possible Harmful Effects of Mefloquine at the Time of the Somalia Deployment

Even before the deployment of CF members to Somalia, DND believed that mefloquine might not be suitable for certain individuals — for example, pilots and divers — for whom some of the adverse effects, such as dizziness and loss of fine motor control, could be dangerous.

However, there was no indication from correspondence we have reviewed that DND knew of any frequent major side effects of mefloquine. In fact, DND medical advisers would have no reason to have such knowledge. Almost all the medical literature at the time of deployment claimed that serious neuropsychiatric effects from mefloquine used as a prophylactic were rare. For example, one study published in 1991 examined neuropsychiatric effects in subjects who had used mefloquine and suggested that serious neuropsychiatric effects occurred in only about one in 13,000 cases.¹⁸ The 1991 Canadian Recommendations for the Prevention and Treatment of Malaria Among International Travellers stated the following:

Mild, non-specific reactions (nausea, heartburn, and mild dizziness) have been described in up to 20 per cent of users. Rarely, severe vertigo, seizures, and psychosis have been reported with weekly mefloquine prophylaxis, but these problems appear to be more frequently observed with higher doses as used for treatment....

Contraindications to the use of mefloquine include...[s]eizure disorder or history of severe depression or psychosis.¹⁹

Only one of the studies we reviewed from the early 1990s suggested that mefloquine might interact adversely with alcohol, and that study simply stated that “[i]n four cases, the reporting physician mentioned exertion, fatigue, sun exposure or alcohol as potential co-factors.”²⁰ In fact, the first firmly documented reference to the possible harm of combining mefloquine and alcohol appeared in a 1995 *Canadian Medical Association Journal* case study involving only one individual.²¹

In-Theatre Experience with Mefloquine

One weekly medical situation report from Somalia gave some indication that some CF members were encountering possible side-effects relating to mefloquine.²² The report, dating from mid-December 1992, noted “several” instances of gastrointestinal upset, headache and thought disturbance, “temporally related to mefloquine use”.

The post-deployment report of HMCS *Preserver* discussed the use of mefloquine and identified several side effects:²³

Malaria Prophylaxis: The ship's company began taking Lariam (Mefloquin) 250mg weekly on 26 November 1992. Three members on B/P medication commenced Doxycycline 100mg daily. All aircrew on active flying duties started Doxycycline. Numerous reactions to mefloquin were reported. One patient contracted Falciparum malaria and denied missing medication. A large percentage of the reactions were GI related: with nausea, burning epigastric pain and diarrhoea. Several patients were switched to Doxycycline. Ten patients experienced nightmares, with one patient having feelings of unease and paranoia. One patient heard voices and talked to himself. All were switched to Doxycycline with no subsequent problems.

In-theatre experience with mefloquine was also touched on in a few interviews conducted by Inquiry staff and in testimony. Several of the CF members interviewed reported that mefloquine caused or may have caused side effects, but they did not report the side effects as serious. Among the symptoms they reported experiencing themselves or that they heard about from others were queasiness, euphoria, depression, inability to sleep, vivid dreams and nightmares.

Some of those interviewed about mefloquine were asked about the possible effects of combining alcohol and mefloquine. None noticed any additional change in behaviour associated with alcohol consumption.

Maj Mansfield testified about mefloquine :

I didn't have any adverse reactions to mefloquine, people might argue that I did, but there were others who clearly did and they would report things like really bad dreams. And...you took the time to open the bottle and read the list of possible side effects and this was enormous...[W]e used to joke at the time that...if you get somebody angry he's just going to walk into the old church tower and waste 20 people, oh sorry, bad mefloquine trip.... But me, personally, I didn't have any problems with it. A couple of my troops did and it typically was bad...dreams...inability to sleep.²⁴

CWO (ret) Jardine was also asked whether he had experienced any particular reaction to mefloquine:²⁵

No, other than it made you feel weird for the first day after you took it. You know, you sort of got that queasy feeling about it, your stomach unsettled and then it would go away.

CWO (ret) Jardine also testified that he never experienced any unusual effects that seemed to be attributable to alcohol and mefloquine.

As mentioned above, Maj Armstrong described one case of organic brain syndrome in Belet Huen that NDMC concluded was "probably" due to mefloquine. Maj Armstrong also argued that the suicide attempt in theatre may

have been mefloquine-related. As well, he reported that two of the three presenters at the 1993 conference had had recurrent minor neuropsychiatric problems in the 24 to 48 hours after their weekly mefloquine doses.

There was no indication from any of the reports we reviewed concerning in-theatre medical problems that mefloquine may have interacted adversely with alcohol. It is, of course, possible that such adverse effects did occur but were not noticed or reported in the documents we reviewed, in the interviews we conducted, or in the testimony we heard.

What is Known Now about Mefloquine

Interaction with Alcohol

The first firmly documented mention in the English-language medical literature of a possible adverse interaction between mefloquine and alcohol appears to be a case note in a 1995 *Canadian Medical Association Journal*. The case note reported one adult male's acute psychosis and depression associated with the combination of mefloquine and alcohol, "an association not previously reported."²⁶ The man was taking a weekly dose of mefloquine and twice consumed about a half-litre of whisky. He experienced paranoid delusions and auditory and visual hallucinations, and felt depressed and suicidal. The authors concluded: "The circumstances of this case strongly suggest that it was the combination of [mefloquine] and ethanol that caused [the] two episodes of severe psychiatric disturbance."

We located no other published studies identifying a possible adverse interaction between mefloquine and alcohol, apart from the 1992 study, mentioned above, that briefly mentioned alcohol as a possible risk factor.²⁷

Adverse Effects of Mefloquine Alone

A U.S. study published in 1993 noted that in Somalia only rarely would mefloquine be withdrawn from U.S. military populations during operational use. "In Somalia, only 1 of 344 soldiers surveyed changed anti-malarial medication due to an adverse event, a severe headache".²⁸ The study concluded that weekly mefloquine (the prophylactic dose) was well tolerated. "Sleep disturbance and increased dream activity were detected in two to three times more individuals in the mefloquine groups. Depressive feelings were noted in two to three times more individuals in the mefloquine groups than in the chloroquine group early in the course of the study, and resolved in the majority of subjects as tolerance developed."²⁹

In late 1993 or early 1994, a draft letter was prepared for the signature of the Surgeon General. The letter appeared to be a response to Maj Armstrong's assertions that mefloquine caused serious problems in Somalia. It concludes,

"[w]e are not aware of any data to support the suggestion that [mefloquine] is perhaps causing previously unrecognized, widespread, subclinical impairment of cognition". Dr. J. S. Keystone, Director of the Tropical Disease Unit at The Toronto Hospital, was asked by DND to review the letter. In his February 1994 reply, Dr. Keystone stated:

Based on my experience with hundreds of returned travellers who have used mefloquine and an examination of the medical literature on the subject, I fully concur with the conclusions reached by your staff concerning the potential adverse effect of mefloquine. I too am not aware of any data which support the suggestion that mefloquine causes "previously unrecognized, widespread impairment of cognition."³⁰

Much of the reference literature since the time of the Somalia deployment continues to identify mefloquine as an appropriate anti-malarial drug for some regions of the world. A 1995 supplement to the *Canada Communicable Disease Report* describes mefloquine as the drug of choice of most travellers to chloroquine-resistant regions.³¹ It calls mefloquine "an effective chemosuppressive and therapeutic agent against drug resistant *P. falciparum*. It is significantly more effective than the combination of chloroquine and proguanil for malaria chemosuppression in sub-Saharan Africa."

The supplement reports that in chemosuppressive (prophylactic) doses, mefloquine is well tolerated:

Adverse effects are similar in frequency and severity to those reported with weekly chloroquine use. Approximately 25 [per cent] of travellers will experience side effects from mefloquine, most of them mild and self-limited. The most frequent minor side effects from mefloquine use are nausea, strange dreams, dizziness, mood changes, insomnia, headache, and diarrhea.... Severe neuropsychiatric reactions (psychosis, convulsions) are infrequent with prophylactic doses and occur in approximately 1/10,000 to 1/13,000 individuals.... Excessive consumption of alcohol should be avoided due to a possible enhanced risk of neuropsychiatric reactions...³²

The supplement identifies several situations when mefloquine should not be used, among them, where individuals have a history of severe psychiatric illness.

The 1995 Physician's Desk Reference notes that post-marketing surveillance of Lariam (mefloquine) has identified several adverse reactions, including central nervous system disturbances (psychotic manifestations, hallucinations, confusion, anxiety and depression).³³ The Desk Reference also issues the following general precautions:

Caution should be exercised with regard to driving, piloting airplanes and operating machines, as dizziness, a disturbed sense of balance, neurological or psychiatric reactions have been reported during and following the use of Lariam.... During prophylactic use, if signs of unexplained

anxiety, depression, restlessness or confusion are noticed, these may be considered prodromal to a more serious event. In these cases, the drug must be discontinued. Lariam should be used with caution in patients with psychiatric disturbances because mefloquine use has been associated with emotional disturbances.

Therefore, even by 1995, although there was a continuing awareness in medical literature of possible severe neuropsychiatric reactions to mefloquine, there was also a continuing perception that these reactions were rare.

The 1996 Compendium of Pharmaceuticals and Specialties carries several warnings about the use of mefloquine.³⁴ Among them is one about the impact of mefloquine on behaviour: "Patients with a past history of psychiatric disturbances or convulsions should not be prescribed mefloquine prophylactically." The Compendium identifies the following adverse effects of mefloquine:

Overall the most frequently reported adverse effects are nausea, vomiting, dizziness or vertigo, loss of balance, somnolence, sleep disorders, (insomnia, abnormal dreams), loose stools or diarrhea, and abdominal pain.

Less frequently reported symptoms include: Central and Peripheral Nervous System: sensory and motor neuropathies (including paresthesia), convulsions or seizures, visual disturbances, tinnitus and vestibular disorders, emotional problems (anxiety, restlessness, depressive moods, psychotic or paranoid reactions), forgetfulness, confusion, hallucinations.

Note: In the literature, the incidence of moderate to severe neuropsychiatric adverse drug reactions (e.g., seizures, psychotic reactions) with mefloquine has been reported at 1/215 following treatment and 1/13 000 following prophylactic use. [The latter figure would apply to CF members, since they were given mefloquine as a prophylactic.]

However, there is recent controversy about the frequency of severe neuropsychiatric symptoms after taking prophylactic doses of mefloquine. In June 1993 *The Lancet* printed a letter from a person who reported severe nightmares, reduced sensation in his legs and "occasionally wondering what it would be like to jump the eight floors from my hotel room":

Later, when I consulted on another matter a British doctor who has been in Kampala some thirty years, he stated that he "never advises patients to take mefloquine. It is a very dangerous drug".³⁵

A letter from Dr. G.C. Cook, a physician at the Hospital for Tropical Diseases in London, England, was published in the *British Medical Journal* in July 1995:

Advocates of widespread use of mefloquine have produced figures purporting to support a rarity of side effects (in particular neuropsychiatric ones), which are seemingly far less common when this agent is used in chemoprophylaxis than when it is used in chemotherapy. A great deal of clinical experience indicates, however, that these reports seriously underestimate

the prevalence of side effects in travellers: only rarely does a week pass in which I am not informed (at the Hospital for Tropical Diseases) by at least one traveller of his or her personal experience of side effects of mefloquine (many of them severe) or of similar symptoms in a colleague or fellow traveller. Many travellers refuse to take mefloquine in the light of their experience of its neuropsychiatric side effects.

Mefloquine should be reserved for chemotherapy [treatment] of infection with *P. falciparum* that is resistant to quinine.³⁶

As well, the *British Medical Journal* published a letter in June 1995 expressing concern about the recommended wider use of mefloquine for British travellers.³⁷ The author of the letter wrote that of 250 mining engineers and their families based in West Africa, more than 162 developed problems, including malaise, lethargy, headache and dizziness.

Another letter to the *British Medical Journal* indicated that the U.K. Ministry of Defence had, since January 1995, been conducting a double blind, randomized, controlled trial of chemoprophylaxis with mefloquine versus chloroquine-proguanil. The letter noted:

The subjects of the trial are British troops exercising in Kenya. Of the total trial population of 624 soldiers, 317 were randomly assigned, by means of random numbers generated by a computer, to receive mefloquine and 307 to receive chloroquine-proguanil. A questionnaire on "unusual" symptoms or illnesses was administered at eight weeks of chemoprophylaxis and was returned by 145 (46%) soldiers in the mefloquine arm of the trial and 142 (46%) in the chloroquine-proguanil arm.

The preliminary results of the trial show that both mefloquine and chloroquine-proguanil have a much higher mild toxicity than has commonly been recognised. Altogether 131 (90%) respondents given mefloquine reported some toxicity as a result of their (unknown) chemoprophylaxis, as did 126 (89%) responders given chloroquine-proguanil.³⁸

A table accompanying the letter showed reports of adverse reactions of three to seven days' duration. Using these criteria, three per cent of those using mefloquine reported paranoid feelings, and two per cent had anxiety attacks.

We are not in a position to resolve the debate within the medical community about the true frequency of severe side effects from mefloquine use. DND or individual members of the CF may wish to pursue this issue in another forum.

In fact, we learned that DND intends to conduct further study on the effects of mefloquine. In April 1997, the Surgeon General, MGen Clay, responded to recent media stories about the possible effect of mefloquine on the behaviour of CF troops in Somalia. MGen Clay explained:

Subjects for the study will be military personnel who are scheduled for deployment to a malarial region and are prescribed mefloquine as part of their usual pre-deployment preparation. Baseline psychometric testing

will be conducted before and after personnel take the drug, to determine whether there are any objectively measurable neuropsychological effects associated with this drug.

Since receiving approval two years ago, the study has not been conducted simply because CF personnel have not been deployed in sufficient numbers to a region where the use of mefloquine is required. It was never planned to include soldiers deployed to non-malarial regions, nor was it planned to include a mefloquine-alcohol component in the study.

The study will be conducted under the direction of military medical personnel, using civilian experts as scientific advisers...

Mefloquine is the accepted prophylaxis when travelling in areas where chloroquine-resistant malaria is found. The Canadian Forces Medical Service will continue to monitor all developments concerning mefloquine, and will continue to use the expertise available in centres such as the Toronto Hospital's tropical disease unit.³⁹

Was There any Evidence of Misbehaviour Caused, or Contributed to, by Mefloquine?

It is clear that mefloquine caused some minor problems in Somalia, as might be expected from a review of the medical literature. We learned of several incidents of gastro-intestinal upset, vivid dreams, nightmares and inability to sleep following the use of mefloquine. There were also a limited number of more serious events that may have been linked to mefloquine. Side effects — or at least the minor side effects, and possibly also the major side effects — appeared to be most pronounced in the 24 to 48 hours after taking mefloquine. It appears from the evidence before us that most CF members took their mefloquine on Wednesdays. Thus, if mefloquine were implicated in misbehaviour, one would expect the misbehaviour to occur in the few days after the weekly mefloquine pill was taken.

Among the violent incidents in 1993 that we investigated were the following:

Wednesday, February 17 — two Somali nationals shot at riot

Thursday, March 4 — two Somali nationals shot at compound

Tuesday, March 16 — Shidane Arone killed

Wednesday, March 17 — one Somali national shot at International Committee of the Red Cross compound

Friday, March 19 — apparent attempted suicide by MCpl Matchee

We can, of course, draw no firm conclusions from this information. We do not know whether those involved in these incidents had in fact taken mefloquine. We do not know what day they took it if they did. Most important, without extensive further investigation, we cannot even hope to judge whether their behaviour may have been influenced by mefloquine. That is for psychiatric and other medical experts to determine.

As a case in point, the following additional investigation would be necessary to determine whether mefloquine might have been a factor in the behaviour of MCpl Matchee on the night of Mr. Arone's death and when MCpl Matchee later apparently attempted suicide:

- We do not know whether MCpl Matchee was taking mefloquine (the vast majority of CF personnel in Somalia did), or whether he had been prescribed an alternative anti-malarial drug; even if he had been prescribed mefloquine, we do not know whether in fact he took it.
- If MCpl Matchee did take mefloquine, we do not know on what day he took it (many, perhaps most, CF personnel apparently took it on Wednesdays).
- Even if MCpl Matchee did take mefloquine, we do not have sufficient evidence before us to judge whether his behaviour was influenced by the mefloquine, or whether his actions were consistent with his personality, the stressful environment of Somalia, his alcohol consumption, or other influences. Even if there were sufficient evidence to suggest that mefloquine influenced his behaviour, we would likely require extensive expert evidence to assess the degree to which his behaviour was influenced by the drug.⁴⁰ It seems unlikely that experts could determine precisely the degree to which mefloquine may have influenced his behaviour.

CONCLUDING OBSERVATIONS

If mefloquine did, in fact, cause or contribute to some of the misbehaviour that is the subject of this Inquiry, CF personnel who were influenced by the drug might be partly or totally excused for their behaviour. However, for reasons described above, we are not able to reach a conclusion on this issue. We can offer only general observations about the decision to prescribe mefloquine for personnel deployed to Somalia.

1. DND's decision in 1992 to prescribe mefloquine for CF personnel deployed to Somalia appears to be consistent with the medical practice at the time. This view is based on medical literature from that time

suggesting that mefloquine was an appropriate anti-malarial drug for troops in Somalia and that severe neuropsychiatric symptoms were rare — in the order of one in 10,000 to one in 13,000 users. U.S. troops also used mefloquine, although in a weaker form. We cannot say, however, whether DND took adequate precautions to ensure that persons with psychiatric disorders did not receive mefloquine, since even in 1992 it was known that mefloquine should not be prescribed to such individuals.

2. At the time of the deployment, there seems to have been no strong evidence that mefloquine might interact with alcohol to produce or increase the risk of abnormal behaviour or to magnify such behaviour. The possible adverse effects of mixing alcohol with mefloquine were analyzed in detail in the medical literature only after the Somalia deployment. DND, therefore, cannot be faulted for failing to restrict alcohol consumption while mefloquine was being used.
3. More recent medical information suggests that severe adverse effects from mefloquine used as a prophylactic are not as rare as first thought, but views on this point conflict, and further investigation may be necessary.
4. Mefloquine use *could* have been a factor in the behaviour of some troops in Somalia. However, one cannot begin to determine whether mefloquine contributed to the behaviour of the individuals in question without answers to the following questions:
 - (a) Did the members in question use mefloquine?
 - (b) Did any of the CF members in question receive a more powerful 'treatment' dose of mefloquine? This would happen only if they had contracted malaria. The more powerful treatment doses were known, even at the time of the Somalia deployment, to carry a greater risk of neuropsychiatric disorders than the weaker dose that most troops received to prevent malaria.
 - (c) Did any of the CF members in question have a history of psychiatric disorders that could increase the risk of severe side effects from mefloquine?
 - (d) On what day of the week did they take mefloquine? On what day, or days, of the week did their misbehaviour occur?
 - (e) Did they complain at any point about any symptoms, mild or severe, that are now known to be associated with mefloquine?

- (f) Did anyone notice abnormal behaviour on the part of the CF members in question in the few days after the latter consumed mefloquine? If so, what was the behaviour? Is it reasonable to say that mefloquine was, or might have been, a cause? Might some other factor instead have caused or contributed to the behaviour (alcohol consumption, racist attitudes, generally belligerent or aggressive nature of the individual, stressful environment, official tolerance of extreme behaviour)?

NOTES

1. Mefloquine hydrochloride. In Canada, mefloquine is sold under the trade name Lariam.
2. M.R. Wallace et al., "Malaria among United States troops in Somalia", *American Journal of Medicine* 100/1 (January 1996), pp. 49–55.
3. Briefing note, Gen A.J.G.D. de Chastelain, Chief of the Defence Staff (CDS), and Mr. R.R. Fowler, Deputy Minister (DM), to the Minister of National Defence (MND), November 10, 1994, Document book 124, tab 12A, p. 1/3. The briefing note was prepared by Capt (N) R.C.D. Climie, Director, Health Protection and Promotion (DHPP), NDHQ.
4. Memorandum, LCol M.L. Tepper, DHPP, and Capt (N) R.C.D. Climie, DHPP, "Preventive Medicine Recommendations for Somalia", file 6600-15 (DHPP 2), September 1992, DND 115004.
5. Letter, Capt (N) R.W. Allen, Commanding Officer, HMCS *Preserver*, to Regional Surgeon, Maritime Forces Atlantic Headquarters (MARLANT HQ), "Post-Deployment Report Op Deliverance, 16 November 1992–7 April 1993", Document book 124, tab 5, p. 5.
6. Briefing note, CDS and DM to MND, November 10, 1994, Document book 124, tab A, p. 1/3.
7. Document book 23, tab 8.
8. Canadian Airborne Regiment, Standing Operating Procedures for United Nations Operations, 11/14/92, DND 178140, Control 000119.
9. CJFS Somalia and HQ and Signal Squadron Standing Operating Procedures, Foreword, January 2, 1993, p. 14/14, DND 385818, Control 004027.
10. This appears to be a reference to MCpl Matchee. Maj Barry Armstrong, Document book 124, tab 6, DND 129924.
11. Press release, "Delta MP Urges Defence Review of Military Sentences in 'Somali' Case", October 6, 1994.
12. Mr. Cummins may also have erred about the day on which the drug was taken. Other information before us suggests that mefloquine was normally taken on Wednesdays. However, Mr. Cummins may have had specific information about when MCpl Matchee took his medication and what medication he took.
13. House of Commons, *Debates*, October 18, 1994, p. 6847.

14. Letter, John Cummins, M.P., to the Honourable David Collenette, Minister of National Defence, regarding the case of Trooper Kyle Brown of the Airborne Regiment, October 26, 1994, DND 093991, Control 022469.
15. Letter, Honourable David Collenette to John Cummins, M.P., Investigation of Pte Brown, December 11, 1994, DND 093988, Control 022468.
16. Inquiry of Ministry, Mr. John Cummins (Delta), November 14, 1994, Q-105.
17. The Minister was almost certainly referring to a February 1995 article in the *Canadian Medical Association Journal* 152/4 (February 15, 1995), pp. 515-517.
18. T. Weinke et al., "Neuropsychiatric Side Effects after the use of Mefloquine", *American Journal of Tropical Medicine and Hygiene* 45/1 (1991), pp. 86-91. The authors note, however, that the incidence of adverse effects could in fact be higher, since they were relying on information about the number of doses of mefloquine sold, which would almost certainly be higher than the number consumed. In other words, some individuals might have received a prescription for mefloquine but not used it.
19. Committee to Advise on Tropical Medicine and Travel, *Canada Diseases Weekly Report* (Health and Welfare Canada), vol. 17S2 (February 1991) "Canadian Recommendations for the Prevention and Treatment of Malaria among International Travellers", p. 5.
20. J.L. Bem, L. Kerr and D. Stuerchler, "Mefloquine prophylaxis: an overview of spontaneous reports of severe psychiatric reactions and convulsions", *Journal of Tropical Medicine and Hygiene* 95 (1992), p. 169.
21. *Canadian Medical Association Journal* 152/4 (February 15, 1995), p. 515.
22. Weekly medical situation report, December 13-20, 1992, Document book 124, tab 3.
23. Letter, Capt (N) Allen to Regional Surgeon, MARLANT HQ, "Post Deployment Report Op Deliverance, 16 November 1992-7 April 1993", p. 5.
24. Testimony of Maj Mansfield, Transcripts vol. 103, pp. 20421-20422.
25. Testimony of CWO (ret) Jardine, Transcripts vol. 105, pp. 20972-20973.
26. *Canadian Medical Association Journal* 152/4 (February 15, 1995), p. 515.
27. Bem, Kerr and Stuerchler, "Mefloquine prophylaxis", pp. 167-179.
28. J. Sanchez et al., "Tolerability of prophylactic Lariam regimens", *Tropical Medicine Parasitology* 44 (1993), p. 257.
29. Sanchez et al., "Tolerability of prophylactic Lariam regimens", p. 257. However, Maj Armstrong noted in his address to the Canadian Forces Medical Services Group Conference in October 1993 that the mefloquine pills taken by the CF were 10 per cent stronger than those given to U.S. forces in Somalia (Document book 124, tab 6).
30. Letter, Dr. J.S. Keystone to Capt (N) R.C.D. Climie, DHPP, NDHQ, February 7, 1994, Document book 124, tab 8.
31. Committee to Advise on Tropical Medicine and Travel (CATMAT), *Canada Communicable Disease Report* (Health Canada), Supplement 1995, "Canadian Recommendations for the Prevention and Treatment of Malaria among International Travellers", October 1995, p. 6.
32. CATMAT, "Canadian Recommendations", p. 6.
33. *The 1995 Physician's Desk Reference*, vol. 85 (Medical Economics Co. Inc.).
34. "Larium", in *Compendium of Pharmaceuticals and Specialties* (1996), p. 752.
35. B. Meredith Burke, letter to the editor, *The Lancet* 341 (June 19, 1993), p. 1605.

36. Ashley Croft, Senior Registrar in public health medicine, Army Medical Directorate, Ministry of Defence, Aldershot, letter to the editor, *British Medical Journal*, July 15, 1995 (emphasis added).
37. I.C. Perry, Consultant in occupational medicine, letter to the editor, *British Medical Journal*, June 24, 1995.
38. Ashley Croft, letter to the editor, *British Medical Journal*, July 15, 1995.
39. Letter to the editor, *The Ottawa Citizen*, April 22, 1997, p. A13.
40. Evidence at the court martial of Pte Brown gave some information about the state of mind of MCpl Matchee on the evening of Mr. Arone's death (March 16th). However, the descriptions of MCpl Matchee's moods were not entirely consistent. In any event, we are not in a position to state whether mefloquine contributed to his particular state of mind without further, and likely extensive, evidence.



THE INQUIRY'S UNFINISHED MANDATE

THE TRUNCATION OF THE INQUIRY

We have set aside this portion of our report to address the Inquiry's unfinished mandate.

Under the revised terms of reference given to us in the aftermath of the Federal Court judgement that characterized as unlawful the Government's decision to curtail our Inquiry, we were instructed to report on the pre-deployment phase of the Somalia operation and were given discretion to report on all other matters in our original mandate, to the extent that we deemed advisable. In compliance with this adjusted mandate, our report describes, in detail, all the many matters that we have been able to canvass in the time available. It also traces the outline of what we were originally asked to investigate but were unable to complete because of the truncation of our work.

There is an obvious public interest in discovering what remains to be inquired into with regard to the Somalia affair.

The Senate passed a motion and established a special committee on the Somalia deployment in an endeavour to pick up where we had left off, but that committee soon aborted its proceedings. Despite this initial setback, Senators have expressed an interest in attempting to resurrect this committee in the next Parliament. Whether they do so, or whether the task of completing this investigation must fall to historians, there is merit in promoting a greater understanding of what we had accomplished, in a preparatory sense, regarding our hearings for the remainder of the in-theatre phase and in relation to the post-deployment phase. The full dimensions of the problems we were actively probing and wished to explore before our efforts were cut short deserve to be known.

Before describing what, in our view, remains to be done, we offer a brief summary of the events that led to the truncation of our Inquiry.

The Inquiry's original terms of reference stipulated a reporting deadline of December 22, 1995. Recognizing soon after we began that the time allotted would be insufficient to investigate and report effectively, we requested additional time to complete our mandate. In the end, however, we were prevented from completing the assigned task by a Government decision to end the Inquiry.

As a result, although we have been able to report on almost all of the 19 items set out in our original terms of reference, we have not necessarily been able to do so to the extent initially contemplated.

We have completely and exhaustively inquired into and reported on all nine of the items listed in the order in council under the heading *Pre-Deployment (prior to 10 January 1993)*.

Regarding the nine items listed under the heading *In-Theatre (10 January 1993 to 10 June 1993)*, we have been able to probe effectively the institutional and systemic issues raised there. We were able to do so by combing through and analyzing the myriad documents we had accumulated, while conducting and amassing a wealth of research on these subjects. This effort was supplemented by our consideration and evaluation of the voluminous testimony received in our hearings on the in-theatre phase of the deployment.

Where we were hampered and where our efforts were curtailed is with respect to certain key incidents and events, such as the death of Shidane Arone, and with reference to our ability to pursue the central issue of cover-up from the operational theatre in Somalia into the boardrooms of National Defence Headquarters (NDHQ). (We were able to trace the origins or genesis of cover-up in relation to the March 4, 1993 incident involving the shooting death of a Somali citizen.) We were also prevented by the truncation of our mandate from pursuing more exhaustively "the manner in which the chain of command of the Canadian Forces (CF) responded to the operational, disciplinary and administrative problems related to the Somalia deployment",¹ that is, the nature of the response of the upper ranks and senior officials at NDHQ to the problems encountered.

This chapter begins with an account of our efforts to gain the time needed to do justice to the Inquiry's mandate. We go on to examine the Government's decision to truncate that mandate. We conclude with a review of the portions of the mandate that we were forced, by reason of the Government's decision, to abandon — the Inquiry's unfinished business.

All these considerations were built into the request for an extension of time that would have led us to report by December 1997, as opposed to June 1997. We were ready to proceed with these matters. Issues and witnesses had been identified, and interviews of witnesses had begun.

REQUESTS FOR SUFFICIENT TIME

There were three requests for additional time to complete our mandate: in June 1995, just over two months after the Inquiry was established; in March 1996; and in November 1996. Some additional time was given following each request, but never the full amount of time requested on the basis of our analysis of the task and a work plan for completing it.

The First Request

The first request took the form of a letter from the Chairman of the Inquiry to the Clerk of the Privy Council and Secretary to the Cabinet, dated June 2, 1995. In it the Chairman identified the factors that prompted the Inquiry's request to extend the reporting deadline to the end of September 1996:

- the fact that the parties had underestimated the amount of time required to prepare a report of the magnitude required by the Inquiry's mandate;
- the lag time between the appointment of a new commissioner and the date when he was able to take up his duties;
- delays in the hand-over of documents from the Department of National Defence to the Inquiry;
- the large volume of material expected to be delivered from DND to the Inquiry — at that time anticipated to consist of some 7,000 documents;
- the emergence, during the Inquiry's early hearings, of new issues requiring the Inquiry's attention (specifically, allegations of additional cases of killing and torture); and
- the unavailability of certain military witnesses during the summer months to be interviewed and to prepare for subsequent hearings.

In the period leading up to this request, the Government's public statements, in the House of Commons and elsewhere, focused on the Inquiry as a vehicle for eliciting all the relevant facts surrounding the Somalia deployment and answering all the questions raised about it. Indeed, the press release issued when the Inquiry was established stated that its terms of reference were broad enough to "answer all allegations made concerning the activities of the Airborne Regiment and the actions and decisions taken by all levels of the chain of command and the Department of National Defence during the pre-deployment, in-theatre and post-deployment phases of the Somalia operation."²

Government spokespersons also said that there was “nothing to hide” and an “independent commission” was needed to get at the truth.³ The Minister of National Defence told the House that to “get to the bottom of all the sorry events that unfolded in Somalia [the Inquiry had been given] the most wide-sweeping investigative powers probably in Canadian history.”⁴

Despite this emphasis on the Inquiry’s exceedingly broad mandate and the thoroughness with which the Government expected us to approach the task, the Government did not give the Inquiry the full amount of time requested, and the reporting deadline was extended only to June 28, 1996 — three months short of the time sought. No reasons were given for the decision or for the Government’s implicit rejection of our assessment of the projected time frame as one that was both realistic and expeditious.

The Second Request

Three months before the June 1996 deadline set in the first extension, developments in the conduct of the Inquiry necessitated another extension request. By the spring of 1996, evidentiary hearings on the pre-deployment phase had been completed, but several new factors had come into play. (These are described further in Chapter 39.) As the Chairman of the Inquiry explained in his letter requesting the extension:

- there had been further delays on the part of the Department of National Defence in handing over essential documents and material, despite assurances that all material would be provided by June 30, 1995;
- the number of documents received had increased to 80,000 from the original estimate of 7,000; and
- the hearings would inevitably be prolonged by the fact that 17 counsel had already been given standing to appear at evidentiary hearings, and more grants of standing were expected.

This was also the period in which evidence of missing or destroyed documents came to light, raising the troubling issue of cover-up. Given these factors, the Chairman wrote in his letter of March 6, 1996, that a new reporting date of September 30, 1997 would be realistic and expeditious.

While the March 6th request was under consideration by the Government, the Prime Minister and the Minister of National Defence again expressed confidence that the Inquiry was doing the job it was supposed to be doing. The Prime Minister told the House of Commons that the earlier deadline had been extended to “make sure that everything is in the open and that the people of Canada know what happened”.⁵ The Minister of National Defence, responding to questions in the House, affirmed the propriety and relevance

of the inquiry's investigation. "The Inquiry is to look into cover-up," he told the House on April 17, 1996. "The inquiry is to look into the destruction of documents. The inquiry is to determine if there is wrongdoing...We will get the answers from an impartial commission which is doing its job and doing it well."⁶

The Minister repeated these and similar assertions throughout the month of April. On April 30th he was joined by the Minister of Justice, who stated that "the government does not question for a moment the right and jurisdiction of the inquiry to look into the whole question of cover-up. That is well within the mandate of the commission."⁷ Added the Minister of National Defence on May 3rd:

...we owe all those people involved in this matter the courtesy of being allowed to give their views at the commission so that it is done in a very systematic, calm and rational way. I think most Canadians feel that is the appropriate way to go about it.⁸

Again, the Government agreed to the Inquiry's request for an extension, but again, the time given fell short of the time requested. The reply from the Clerk of the Privy Council, dated June 21, 1996, extended the reporting deadline to March 31, 1997, six months short of the Chairman's request, and added, "The Commission's progress can be assessed further in the fall."

The Third Request

By the fall, it was clear to us that although progress had been substantial, work remained to fulfil the terms of reference. The Chairman wrote to the Government on November 27, 1996, outlining progress to date and the elements of the terms of reference still outstanding. By the date of the letter, we had completed preliminary policy (background) hearings; hearings relating to the pre-deployment period; and hearings relating to the early part of the in-theatre phase of the deployment (the arrival of Canadian Forces in Somalia); and we were conducting hearings relating to the shooting incident of March 4, 1993.

The matters still to be dealt with to fulfil the terms of reference were completion of hearings on the March 4th incident; receipt of evidence from LCol Mathieu and Col Labb  up to and including the March 4th incident; evidence relating to the March 16th incident; evidence on other in-theatre incidents; evidence relating to the actions and decisions of key figures at National Defence Headquarters, including the Chief of the Defence Staff, the Deputy Minister of National Defence, and the Minister of National Defence; and evidence relating to issues of cover-up at the highest levels in the chain of command and within the civilian staff of NDHQ.

In addition, to ensure procedural fairness, an opportunity was to be given to parties with standing at the hearings to reply to evidence or provide

supplementary evidence related to all phases of the deployment and for parties and affected individuals to make submissions.

Finally, by this time the number of documents received from DND and in the process of being reviewed by Inquiry staff had grown to 150,000, totalling more than 600,000 pages. This was nearly double the number of documents received by the time of the second extension request, and more than 20 times the number estimated by DND in the initial stages of our work.

The Chairman's November 27th letter went on to outline a plan for the expeditious completion of our work — including briefings by DND and the military on changes in policies and practices since the Somalia deployment — and to propose three scenarios for completing the Inquiry. The earliest proposed deadline was the end of December 1997, which we emphasized was the minimum time needed to complete the work assigned in a comprehensive, reasonable, and effective manner.

In the meantime, the Government continued to assure Canadians that they wanted "the inquiry to finish the job". "As soon as we get the report from the commission," the Prime Minister told the House, "we will be able to see what happened, what is wrong, and what action is required."⁹ The Minister of National Defence reiterated the Government's commitment to a thorough, careful approach:

This demonstrates...why we had to have the inquiry in the first place...to put it in...an impartial setting so that everyone could be heard fairly and all the evidence could be examined clearly and thoroughly.¹⁰

On October 4, 1996, however, the Hon. David Collenette resigned as Minister of National Defence. The new minister, the Hon. Doug Young, said on October 8th that he was prepared, if he had the support of the House of Commons, to ask the Inquiry to report by the end of March 1997 and that he would encourage the Inquiry to report "as quickly as possible on what happened, why it happened, and who was responsible for what happened in Somalia."¹¹ The following day he said in the House that he wanted a "thorough investigation of everything that happened in connection with the situation in Somalia" and that he wanted the Inquiry to "report as scheduled on March 31, 1997".¹²

The Minister informed the House of Commons on December 10th that the Inquiry had requested an extension. He sought members' views on the extension request in these words:

I hope all members of this House will express their views on whether or not the Inquiry should continue on, if they would like it to go for a year, two years, three years or four years, or if they think there might be some value in trying to learn the lessons of what happened in Somalia so that we can avoid a repetition of the intolerable incidents that took place there... I guess it is all a question of whether it happens in our lifetime or not.¹³

THE DECISION TO TRUNCATE THE INQUIRY

With this apparent change in attitude on the part of the Government, it was perhaps not surprising that the Government responded to our third extension request with a letter, dated January 10, 1997, stating that even the shortest scenario proposed by us was "not in the national interest". The letter also specified a final reporting date of June 30, 1997. Despite our explicit request, in the November 27, 1996 letter, for guidance on which items in the terms of reference could be eliminated or shortened in the interests of achieving the shorter time frame, the Government's letter of response was silent on this issue.

It was not until April 3, 1997 — following a court decision on a case brought by an individual who might have been called as a witness had the Inquiry not been truncated — that the Government amended our terms of reference to specify which items must be reported on and which items we could leave aside if we determined that the time frame was inadequate.¹⁴

Effects of the Truncation

The six-month extension requested in November 1996 would have given us until the end of December 1997 to report. This would have allowed the Inquiry to canvass all the major issues set out in the original terms of reference and discussed in the next few pages. Instead, the Government's decision of January 10, 1997, and the amended terms of reference of April 3, 1997, severely restricted the Inquiry's ability to examine crucial aspects of the original mandate.

More specifically, in summary, the Inquiry would not be able to consider fully:

- the nature and adequacy of the response of NDHQ to the events in Somalia;
- the nature and scope of the events of concern that occurred during the deployment;
- a possible cover-up in the upper reaches of NDHQ and the Canadian Forces;
- whether the failure to provide information and documentation to us was evidence of a continuing cover-up; and
- the testimony of military, bureaucratic and political officials at the highest levels.

The messages implicit in the Government's decision are as important as the issues left unexplored by truncation of the Inquiry. First, after giving every indication for a period of 18 months that the Inquiry would be allowed to

complete its comprehensive, systematic approach to gathering and analyzing evidence and reaching conclusions and recommendations, the Government abruptly changed course. We saw this decision as unwarranted interference with the independence of a public inquiry, interference that is also alien to our political traditions and endangers principles of democratic accountability.

The Government's January 10th decision and subsequent statements also reflected and reinforced attitudes, already apparent in dealings between Government officials and the Inquiry, of antagonism toward the work of our Inquiry. This also established a foundation for some parties to bring motions in court, arguing that the Inquiry would not or could not afford them the fundamental fairness required by law and should therefore be stopped from proceeding or issuing a report. The Department of National Defence was also given an opportunity, by virtue of the truncation, to delay the production of documents — many of which were already long overdue — until they would be of little or no value in completing our work.

Also of concern to us was the message that would be sent to young soldiers about the accountability of the upper ranks compared to their own. The Inquiry was established, in part, to alleviate concerns about imbalance in the official reaction to the events in Somalia. The feeling was that the military justice system had paid too much attention to the behaviour of soldiers of lower rank, and that not enough effort had gone into examining the role and responsibility of the leaders, higher-ranking officers, senior bureaucrats, and government officials. The imposed deadline made it difficult to redress this imbalance properly.

What follows is a summary of the unfinished business before the Inquiry.

THE UNFINISHED MANDATE

We have fully investigated and completed the pre-deployment phase. With respect to the in-theatre phase of the deployment, we received and considered sufficient testimony and extensive documentary evidence pertaining to the vast majority of the matters specified in our terms of reference. In this context, the extensive probing of the shootings in the back of two fleeing Somali civilians on the night of March 4, 1993, has provided substantial, significant, and cogent evidence for the fulfilment of almost all items of our terms of reference.

However, some of our work remains undone. We obviously cannot address, in full detail, the overall post-deployment response of the chain of command to the problems encountered during the Somalia mission or the behaviour of senior officers and officials for the purpose of assessing their personal

accountability, because our hearings were brought to an end before the most important witnesses relevant to that issue and time period could be called. Our schedule was aborted just as we were beginning to question the highest levels of leadership of the Canadian Forces and the Department of National Defence and to explore the allegations of cover-up with respect to some incidents. An immediate result was the withdrawal of a number of notices already sent to individuals warning them of possible adverse comment on their conduct. Thus, we could address systemic issues arising out of in-theatre and post-deployment events, but could not, in our report, identify any individual misconduct or failings involved. The Government's decision effectively allowed many of those in senior leadership positions during the deployment to avoid entirely accountability for their conduct, decisions, and actions during and after the mission.

More specifically, we were not able to hear all relevant testimony of the senior leaders, who, at the material times, held the offices of Minister of National Defence, Deputy Minister of National Defence, Judge Advocate General (JAG), and Chief of the Defence Staff. These were the very officials ultimately responsible and who would, in the normal course of events, have been ultimately accountable for the conduct of the deployment; the policies under which it was carried out; errors, failures and misconduct that may have occurred in its planning, execution and aftermath; and ensuring that appropriate responses were made by the Canadian Forces and the Department of National Defence to problems that arose or were identified.

We would also have called to testify the executive assistants and senior staff in the offices of these senior officials and leaders, not only to receive their evidence with respect to their own conduct and that of their superiors and associates, but also to understand how their offices were managed; the functions, roles and responsibilities they and their staff were assigned and performed; and the policies or operating procedures in place to guide the management of their offices.

Further, in accordance with the mandate given to us to inquire into and report on the manner in which the chain of command of the Canadian Forces responded to the operational, disciplinary and administrative problems encountered during the Somalia deployment, we also would have received evidence from senior officials associated with the earlier internal de Faye Board of Inquiry; officials who conducted investigations of events and incidents in theatre; and officials in the office of the Judge Advocate General who managed the response of the military justice system.

Government spokespersons have frequently asserted that the decision about whether and when to call senior leaders or officials to testify was entirely our responsibility and within our discretion. They have stated that we could easily have called anyone we wished within the time allotted to us

to complete our work. One need only examine the terms of reference drafted by the Government, however, to recognize immediately how unrealistic these assertions were. Clauses relating to senior leadership essentially directed us to examine their responses to the “operational, administrative and disciplinary problems” encountered during the deployment. In order to assess those responses, it was first necessary to identify, independently and painstakingly, what the problems were (and they were legion). Had the military admitted to some of the problems at the beginning, it would have simplified our work. But their persistent denial — until overwhelming evidence was adduced in our proceedings and emerged from incidents in Bosnia — made this exercise necessary. We would have been justly criticized had we relied on the very leaders and investigators whose conduct and responses we were examining and assessing to define the problems arising out of the deployment for us. Even more, we would have been justly criticized had we examined senior leaders about their possible involvement in a cover-up without first establishing or receiving evidence from which it could be inferred that a cover-up might actually have occurred or been attempted; the nature and scope of any cover-up; what information had been covered up; and how the leader in question might have participated.

Our findings on the March 4th incident (see Chapter 38) illustrate the effectiveness of proceeding from the ground up, as it were, in investigating a cover-up, and clearly indicate what we might have achieved if left to finish our work.

Mr. Young, then Minister of National Defence, also asserted frequently and to our amazement that all that needs to be known about what happened in Somalia is known. We continue to believe that important facts concerning both the deployment and its aftermath are not yet known or remain obscure. We thought, because of its public statements, that the Government also believed that it was essential, and in the interests of the Canadian military and its renewal, publicly and in an independent, non-partisan setting, to expose, understand, confront, and analyze the facts and address all the important matters raised in the terms of reference. Obviously, we were mistaken in our belief, as the Government abandoned its earlier declared interest in holding to account senior leaders and officials who participated in the planning and execution of the mission and responded to the problems that arose. Once again, history repeats itself: only the lower ranks have been made to account for the marked failures of their leaders.

We fear that implementing hastily crafted and mostly cosmetic reforms, coupled with the abandonment of an interest in accountability, and implementing reforms unrelated to specific facts and problems identified and assessed in a thorough, independent, and impartial process, will serve merely

to postpone the day of reckoning that must surely come. In this regard, one might well ponder whether the incident of March 16, 1993 might have been avoided if the March 4th incident had been investigated properly, the facts had been quickly exposed, efforts had been made to identify and remedy defective policies immediately, and those ultimately responsible for the conception and execution of the activities of March 4th had been required to account, along with those who more directly erred, engaged in misconduct, or displayed a lack of discipline. One might also ponder, on a broader scale, whether the sad and strikingly similar events and problems that happened during the Bosnia deployment, as identified in the board of inquiry and the Thomas report, might have been avoided if greater efforts had been made, early on, more directly and objectively to identify, confront, and insist on accountability for the personal and systemic problems, errors and failures surrounding the deployment to Somalia. Many who were in the senior chain of command for Somalia also had responsibilities for what transpired during the Bosnia deployment.

Although the truncation of our investigation and hearings has prevented us from fully addressing some significant facts, problems, errors, and failures associated with the deployment, we have concluded that it is our duty and in the interests of the Canadian public and the Canadian Forces, at least to identify unresolved questions and issues arising from some of the significant incidents that occurred and from the actions, inactions, decisions and responses of senior leadership related to those incidents. It is to be hoped that these issues and questions will be addressed and resolved and appropriate remedial measures taken.

INCIDENTS IN THEATRE

The February 17th Riot at the Bailey Bridge

On February 17, 1993, two Somali nationals were shot by CF members and one was killed during a riot in Belet Huen. We know from documents provided to us and interviews conducted that some segments of the Belet Huen population were upset with LCol Mathieu's handling of the local population and the organization of their local government committees. We have received information that could support a conclusion that the Canadian Forces made some faulty decisions that resulted in elements of Belet Huen society feeling that Canadian Forces were showing favouritism among warring factions. The CF has suggested the riot was an orchestrated event instigated by the

clan leader Mohammed Farah Aideed. While it is doubtful that our hearings could have determined its real causes, we would have examined more thoroughly what the CF did to understand the dynamics and make-up of the local society and how it distributed benefits to the local population. Information received on this issue would have been directly relevant to our assessment of the preparation, planning for, and execution of the mission and the relevant actions and decisions of leadership. Had we been able to examine and report on the facts, our conclusions would likely have been useful in planning CF involvement in future missions in like circumstances.

Documentation in our possession also suggests that the CF went on this mission without clear parameters for the use of crowd control mechanisms and was poorly equipped for such situations. Decisions about the use of chemical riot control agents were reserved for the Commander of the Unified Task Force (UNITAF). It became necessary to approach UNITAF Headquarters during the disturbance itself for permission to use tear gas. Permission was refused. We would have explored whether the failure to obtain advance approval for the use of chemical or other riot control agents, and for the type of agents that could be used, reflected planning deficiencies. It seems apparent that, in a mission intended in part to deliver supplies to a starving population, crowd control should have been a primary concern and that the identification of agents that could be used to control crowds would have been settled in advance with the UNITAF Commander. As the decision not to use tear gas was made in the middle of the event itself, and by the UNITAF Commander instead of personnel on the ground who were aware of the circumstances, we would also have explored whether the CF agreed to unreasonable limits on its discretion to deal with some matters within its sector when it joined UNITAF.

Information in our possession suggests that the crowd may, in fact, have been incited by the fact that the bridge was blocked. According to statements from Somalia provided to us, the demonstrators had earlier demonstrated peacefully in the town and simply wanted to conduct a second march through town. If this was so, we would have examined more closely the reason the CF members blocked the bridge. If the facts supported a conclusion that this decision reflected bad judgement on the part of CF leadership and eventually resulted in the use of deadly force, we would have considered whether and to what extent the eventual result was traceable to a lack of preparation, poor planning, poor intelligence, or weak leadership.

There is also a question whether the deployment of personnel in the vicinity was adequate in the circumstances (one platoon to deal with a crowd of 300). The rationale for this would also have deserved further exploration. We might have concluded that a more substantial deployment of personnel would have avoided the need for use of deadly force.

In general, our information suggests that the CF's training and preparation for crowd control should be examined and compared with that of other organizations having similar responsibilities.

The Incident of March 4, 1993

We were able to explore thoroughly the in-theatre aspects of the March 4th incident. In essence, we canvassed elements of the incident with the exception of the role of persons in high office in NDHQ who may have contributed to, or been responsible for, a cover-up in relation to this incident.

We concluded in our chapter addressing the March 4th incident (Chapter 38) that a number of specific actions and omissions by the chain of command in Somalia and at NDHQ delayed the required military police investigation and, initially at least, served to cover up the truth about this incident from the Canadian public.

The cover-up in Somalia and at NDHQ manifested itself in a number of ways. There appeared to be no pressure from anyone at NDHQ to have Col Labb   deliver the report of the Commanding Officer's investigation when it was delayed. We have questioned why NDHQ appeared to take a hands-off approach to the suspicious behaviour in Somalia. We have expressed our concern about what NDHQ knew or chose to know about the incident at material times, particularly with regard to the fact that those in the chain of command were almost immediately aware of the seriousness of Maj Armstrong's allegations and that Col Labb   was in daily contact with NDHQ. We have concluded that NDHQ used an after-the-fact questioning of the understanding of the Rules of Engagement as justification for its failure to order an immediate investigation by military police. Further, parallel actions in Somalia and by NDHQ senior officials produced a complex 'damage control' project that attempted to mislead the media and the Canadian public. Finally, we have concluded not only that a cover-up was carried out of the actual events of March 4th, but also that fundamental problems were not adequately disclosed through the chain of command in Somalia and not resolved by this chain of command in a timely fashion.

Although the evidence we heard enabled us to draw these conclusions, some questions remain. Because of the compressed time frame allotted to our work, we were unable to call key witnesses who might have enabled us to determine the identity of all who may have participated in, and were responsible for, the cover-up mounted in connection with this incident, particularly the full nature and extent of involvement, if any, of NDHQ and its personnel.

We had intended to, but could not, question the officials then in office: the Chief of the Defence Staff, Adm Anderson, the Deputy Minister, Robert Fowler,

the Minister of National Defence, the Rt. Hon. Kim Campbell, the Judge Advocate General, and relevant officials employed in their offices about what they knew or information they received concerning the events of March 4th. We also could not question them about what they knew about the cover-up that was mounted; the 'go slow' policy applied to the investigation of the incident; the failure to press Col Labb  for the long-delayed report on the CO's investigation; and the development of the ROE justification for failing to mount a timely military police investigation. We would also have questioned them about the inquiries they made, responses they received, or discussions they participated in about the incident, in light of the fact, as we have found, that the seriousness of the incident and allegations surrounding it were known almost immediately at NDHQ.

We had intended to, but could not, question the CDS about any efforts he may have made to obtain information, or information he may have received when he visited the troops in Somalia from and after March 8, 1993. During this visit, in the presence of Maj Armstrong, he toured the hospital in which the wounded Somali was housed, and he had meetings with Col Labb  in Nairobi. We would have questioned him about what he did with any information he received about the incident or its handling during this visit, and whether he discussed it with the Deputy Minister, the Judge Advocate General or the Minister of National Defence. We do not know whether he saw or discussed a draft of Capt Hope's initial investigative report at that time; whether he was aware the report should have been completed within 48 hours; what he did to obtain the report when it was delayed; and when he was actually given copies of the reports prepared by Capt Hope and Col Labb . We do not know whether he was briefed before receiving them or what his responses or reactions, if any, were on reading them. We do not know when, or whether, he was told that there would be a Military Police investigation; by whom or by what means he might have been told; the rationale he thought applied or was given for ordering the Military Police investigation; or what his response was on being advised that it was to take place.

There were other questions about the March 4th incident and the related actions and decisions of senior leadership that would have been explored, had time permitted. What was Adm Anderson's rationale, when visiting the troops in Somalia shortly after March 4th, for advising them to keep a low profile? Had he been specifically advised or instructed to do so, or did he, on his own initiative, simply pass on the Deputy Minister's message at the Daily Executive Meeting (DEM) of March 1, 1993, that "the department should take as low a profile as possible" and recognize "the extreme sensitivity in all matters relating to public statements, speeches, press releases, etc. by all members in the department over the next few months, in view of the expected candidacy of the Minister for the leadership of her party"?¹⁵

We have concluded that this message set the tone for many of the questionable activities that followed. Since the Minister did not announce her candidacy until March 25, 1993, we would have inquired whether the Deputy Minister acted on speculation or whether the Minister, or anyone acting on her behalf, had already advised him of her plans and asked him to pass on to participants in the DEM her concerns about the departmental profile.

As we noted in our chapter addressing the openness of the Department of National Defence in its dealings with our Inquiry and the public (Chapter 39), almost immediately after the Minister assumed the defence portfolio in early January 1993, the DM, Mr. Fowler, reminded those attending the DEM of January 22, 1993, that "the MND enjoyed excellent relations with the media, and that she was not about to jeopardize this relationship."¹⁶ What message was intended to be conveyed by this statement, and how did those receiving the message interpret it? Again, was the DM asked by the Minister to pass on her concerns, or did he make the statement on his own initiative? To what lengths were the Minister, the Deputy Minister and those receiving the message prepared to go to protect the Minister's media relations or image? We would also have explored the extent to which the senior leadership believed it was appropriate to inject political considerations into military deliberations and operations.

We would have explored the reactions of others attending the DEMs or the troops on receiving these directives. Did the CDS or the JAG have any views about the wisdom of directing (or receiving instructions to direct) the troops to relate their conduct to political considerations? How did the desire to avoid interference with the Minister's political aspirations or media relations influence or relate to the 'damage control' policy mounted in relation to the incident? Further, by what process and with whose authority or approval was the damage control policy, revealed at our hearings, put in place? Were the CDS, the DM, the JAG, or the Minister involved in the decision of April 14, 1993, to send the Military Police to investigate the incident? Who actually made the decision and by what process? When and why was that decision made? Did the CDS or the JAG have any concerns about the involvement of the Deputy Chief of the Defence Staff (DCDS), VAdm Murray, Col Labb  , or LCol Mathieu, in investigating their own conduct and actions?

We intended to ask officers in the office of the Judge Advocate General to testify about legal advice sought by and given to the DCDS and the chain of command throughout the March to May 1993 period, on issues such as the development and implementation of the Rules of Engagement (ROE); the decision not to call in Military Police in the days following the March 4th incident; the response to Col Labb  's report received March 23, 1993; the decision to demand a copy of Capt Hope's report; their inquiries, if any,

about why Col Labb   did not send it to Ottawa immediately; their reaction to LCol Watkin's report of April 14, 1993, which criticized Col Labb  's report; the decision of April 14th to call in the Military Police; their reaction to the Military Police report; their reaction to Col Wells' "inexplicable delay" comment; their decisions about who should be charged and what charges should be laid; and the conduct of the courts martial. Finally, we would have explored whether and, if so, to what extent, claims of solicitor/client privilege were used to enable senior officials to mask or deny knowledge of information that had, in fact, been forwarded through either the operational or the JAG chain of command.

We would also have probed whether the office of the JAG was consulted about the directives issued by the DM and the CDS and any opinions they might have held or expressed about their advisability. We would have considered, further, the evidence of other military police investigators, as well as prosecutors who were involved at various stages of the incident and its aftermath. We would have questioned LCol Watkin further about his report on the ROE and examined the consideration and assessment of the ROE by the de Faye Board of Inquiry.

We would also have explored the Chief of the Defence Staff's understanding of the ROE and whether the DCDS advised him or the DM about any misunderstandings of them that the troops may have had. We heard evidence that the office of the JAG did not inform the DCDS of Maj Armstrong's allegations related to the March 4th incident until April 14, 1993. We would have asked why there was this delay, in light of evidence we heard that the office of the JAG had a document containing the allegations in its possession on April 2, 1993. If, as we were told, there was such a concern in Ottawa about the application of the ROE and a desire to prevent further incidents, why did officials wait so long for an incomplete report from the field? One would have thought that the March 16th incident would have generated even more pressure to review previous incidents, the reports on them, and the ROE to which they were connected. The order to abuse prisoners, issued by Maj Seward on March 16th, suggested that an imperfect policy was still being applied and that the troops' interpretation was still incorrect. Hence, we would have explored further why officials failed to take corrective measures more quickly in the wake of the March 4th incident.

Finally, we would have explored more fully whether and to what extent, if any, NDHQ itself, and/or the present or previous Government, in collusion with NDHQ personnel, participated in a campaign to smear the character and reputation of Maj Armstrong; the nature and extent of efforts generally to discredit persons who were perceived to be ready to dissent publicly from the military's official version of the March 4th incident; and the extent to which any such campaign or effort, if established, might have been part of

a broader, continuing attempt to cover up elements of the March 4th incident. Our investigation of this matter would have added significant insights into leadership in the CF chain of command; the ethics and values of the leaders; the willingness of senior officials to be held accountable for their conduct and decisions; their manner of responding to problems that arose during the Somalia deployment; and their willingness, generally, to confront problems in the military.

On March 9, 1997, a *Toronto Star* reporter, Allan Thompson, wrote that, in November 1994, he had unwittingly been used by senior DND officials in a sophisticated attempt to discredit Maj Armstrong's credibility by releasing a pathology report that contradicted Maj Armstrong's conclusions about the March 4th shooting, while keeping other less helpful police documentation "under wraps"¹⁷. According to Mr. Thompson, DND officials reportedly did not want the release to be seen as an overt attempt to discredit Maj Armstrong, so they "decided to orchestrate a leak of the document that wouldn't look like a leak". Mr. Thompson was told by a DND source that if he were to call and ask the Defence department for a copy of the autopsy report, it would be made available. Mr. Thompson called a public affairs officer, Lt (N) Al Wong, and was faxed a copy of the previously undisclosed report the same day.

Mr. Thompson concluded that this action was carefully masked by a "paper trail" laid down by Defence officials to "cover their tracks".¹⁸

In a subsequent newspaper article, it was revealed that Mr. Thompson's unnamed "trusted government source" was John Williston, then Press Secretary to the Minister of National Defence. Mr. Williston was quoted as stating he "did nothing wrong" and that what he had done did not amount to leaking information. However, it was revealed that Mr. Williston had not notified any other media organization that the report was available. It was also noted that, when Maj Armstrong's allegations were first released, the reporter who "broke the initial story" suddenly began to receive anonymous phone calls slandering Maj Armstrong — "calling him everything from a drunk to a loose cannon".¹⁹

We would have made further inquiries about these events, at least for the purpose of determining whether the release was a component of broader continuing efforts to reinforce the official version of the March 4th incident promoted by the Department and the chain of command and to suppress or discredit any other interpretation.

We would have explored further whether this alleged attempt to discredit Maj Armstrong was an isolated event or was part of a broader pattern.²⁰ If a more pervasive pattern became evident, it would have been of interest to examine the manner in which military regulations governing the public release

of information have generally been applied in practice and whether they are used to restrict the freedom of speech of members of the Canadian Forces unduly. The existence of a broader pattern of questionable practices relating to the release of information would also have spoken loudly to our assessment of cover-up, its possible systemic dimensions, and the values, ethics and leadership of any officers and officials involved.

The March 16th Incident

The incident of March 16, 1993, involving the torture and death of Shidane Arone and the subsequent attempted suicide of MCpl Clayton Matchee, shocked Canadians and were significant influences on the decision of the Government to establish our Inquiry. We had intended to examine this incident in some detail, because, contrary to popular belief and to assertions made on behalf of the Government, many questions remain about the handling of the investigation and the issue of cover-up. We would have probed the alleged severe beatings of two Somalis by members of 2 Commando on the preceding nights, March 14th and 15th. We found the following entries in MWO O'Connor's personal diary:

- *March 14: 2 Cdo caught a Somali in their wire last night. I guess they kicked the living shit out of him.*
- *March 15: Apparently 2 Cdo caught a thief at the airport, they kicked the living shit out of him just like they did the one yesterday.²¹*

A number of entries in this diary are significant, indicating uncontrolled aggressiveness in 2 Commando and excessive alcohol consumption. As early in the deployment as December 25 and 26, 1992, MWO O'Connor wrote:

December 25: All of 2 Cdo has this kill-crazy attitude and it does not seem as if the NCOs have a grip on the troops.

December 26: Everyone is getting geared up for the upcoming operations (air mobile), even kill-crazy 2 Commando.²²

The diary contains numerous references to heavy alcohol consumption throughout the deployment, both during the day and at night, including the entries for the following dates in 1993: January 5th, 12th, 14th, 27th, 28th and 29th; February 2nd, 7th, 11th and 22nd; March 13th, 14th, 17th, 25th and 31st; April 15th, 22nd, 27th and 29th; and May 4th, 14th, 19th, 25th and 26th.

In fact, the actions, decisions, and responses of the senior political and military leadership in relation to the March 16th incident have yet to be thoroughly and adequately explored and understood.

The March 4th and March 16th incidents raise questions about the adequacy of policies applicable to military investigations of unusual deaths or the deaths of detained individuals. A policy appears to exist whereby a criminal investigation is started only if there is hard evidence pointing to the involvement or guilt of one or more specific individuals, when an investigation should actually start when there is a reasonable suspicion that a criminal offence has been committed. The failure to treat the March 16th death of Shidane Arone as a possible culpable homicide from the beginning resulted in the potential loss of physical evidence from the scene and evidence that might have been found on potential suspects. It resulted in the detention of MCpl Matchee in a very sloppy and inappropriate way. We would have examined whether he was allowed to keep in his possession a camera that might have contained vital evidence and that was never recovered. We would also have examined whether MCpl Matchee wrote a document amounting to a confession, and whether this document was destroyed. We would have probed further into the exact details of the confession and whether it incriminated others. Although we have information suggesting that the method and circumstances of MCpl Matchee's detention would have allowed him to attempt suicide, we were unable to hear evidence that would have clarified the extent and nature of the failures to take measures for MCpl Matchee's safety as a detainee and the adequacy of CF policy applicable in these circumstances.

We would have explored whether there were any similarities between the plan for the March 4th mission and the plan for the mission organized by Capt Sox on March 16th, including the use of bait to lure the local population into the Canadian compound. We would have explored the conduct of the investigation into the March 16th incident. We would have tried to determine whether the investigation reached appropriate conclusions about who participated in the torture and killing of Shidane Arone; whether appropriate charges were laid against those who participated; and the reasons for any deficiencies in investigating or charging that might have been established on the evidence. We would have explored whether Capt Gibson and Maj Seward acted diligently in carrying out their duties in relation to the investigation of the March 16th incident and the extent to which any lack of diligence by either in initiating or pursuing aspects of the investigation, if established, reflected poor training, ignorance, or ineptitude or, on the other hand, their possible participation, or the participation of others, in an attempt to cover up or prevent exposure of the true facts.

No matter what the conclusion might have been, it is essential that the adequacy of policies and procedures guiding medical and senior personnel with respect to the investigation and handling of an unexplained death be reviewed. The apparent absence of even rudimentary examinations of bodies for signs of the cause of death and the lack of any protocol, let alone the

failure to conduct an autopsy, would have been obvious questions deserving further exploration. We would have explored why Capt Gibson failed to record that Shidane Arone had a broken nose, even though he apparently knew that this was the case, because he later informed his superiors of it. There appears to be no equivalent of provincial legislation requiring coroners' inquests in CF policy or practice. Had the incident occurred in Canada within provincial jurisdiction, it is likely that suspicion of a murder would have arisen and been acted on much more quickly. We would, therefore, have tried to determine whether there was a vacuum in CF policy, its nature and extent, and what needs to be done to remedy the situation, if it still exists.

Aside from the horrific facts, the most disturbing aspect of the information we received about this incident relates to the possibility that it was either the subject of another, separate cover-up or that the cover-up initiated in relation to the March 4th incident expanded to include the circumstances of this incident as well. Around the time of the March 16th incident, allegations were made in the media and by opposition members of Parliament that the Minister of National Defence, the Hon. Kim Campbell (who announced her candidacy for her party's leadership on March 25, 1993), had failed to make adequate public disclosure of, or had covered up, information of which she was aware or that she should have pursued more diligently. Some suggested the former Minister of National Defence had misled Parliament about what she knew and when she knew it. On the other hand, suggestions also surfaced that the Deputy Minister of National Defence or the CF chain of command, either independently or in concert, might have concealed information about the incident from the Minister. We have received documents, including affidavits, raising disturbing questions about the working relationships among personnel in some senior leaders' offices at the time and the management of those offices. We would have explored the decisions and actions, in the aftermath of the March 16th incident, of the highest ranking officers and officials of DND and CF, and the Deputy Minister and Minister of National Defence.

We have already referred to the directives of January 22 and March 1, 1993, issued by the Deputy Minister, Robert Fowler, at daily executive meetings, reminding those present that the Minister was "not about to jeopardize her excellent relations with the media" and urging all in the Department to be sensitive to her political aspirations, to tailor their public statements accordingly, and to keep a low profile. We have stated that we believe there was a relationship between these directives and the cover-up ultimately mounted in relation to the March 4th incident. We would also have explored their relationship to the responses of senior leadership and the chain of command to the March 16th incident. We would have explored whether those direc-

tives were issued at the request, on the instructions of, or with the actual or tacit approval of the Minister, or whether the Deputy Minister issued them on his own initiative.

We do not know whether the Minister reviewed DEM minutes, was interested in or was briefed on what took place or decisions made there, or otherwise came to learn of the Deputy Minister's directions. We would have questioned her about her reaction to them and her reaction on learning of the related admonition of the CDS to the troops in Somalia. We would have explored whether the Minister was aware of, or approved in advance, Adm Anderson's intention to admonish the troops to keep a low profile in light of her expected candidacy for the leadership of her party. If the Minister did not know or approve in advance, we would have sought her views about what might have motivated the CDS to make the statement and what steps, if any, she took when she did learn about it. If the Minister did not appear to know of these extraordinary directives issued and statements made at the DEMs by her Deputy Minister, we would have asked Mr. Fowler whether the Minister was advised or knew of his intentions in advance or, if not, why she was not informed, and what might have motivated him to issue these directives on his own initiative.

One document filed in our proceedings reveals that Mr. Fowler, on October 14, 1993, wrote to the Assistant Deputy Minister for Policy and Communications, with copies to the Vice Chief of the Defence Staff, the Deputy Chief of the Defence Staff, and the Assistant Deputy Minister (Personnel), criticizing a response to query that had been prepared by the Public Affairs Branch and expressing a keen interest in controlling "the agenda".²³ According to evidence received when we considered the adequacy of the production of documents pursuant to our order, Mr. Fowler was fully, if not excessively engaged in the management of the information flow within and from NDHQ, and he monitored closely the release of Somalia-related information to the media.²⁴ We would have inquired of Mr. Fowler and other witnesses the role he played in managing the flow of information within and from NDHQ at the time of the March incidents. We would have questioned Mr. Fowler about what "controlling the agenda" might have involved in practice, both in general terms and, more specifically, in relation to the March 4th and 16th incidents. We would have explored the lengths to which he might have been prepared to go, or to direct others to go, to affect the information flow within and from NDHQ as a means of either controlling the agenda, accommodating or promoting the Minister's political ambitions, or promoting any damage control or cover-up process that might have been implemented or ongoing. We would have questioned him about his perception of the extent, if any, of the Minister's approval of, knowledge of or involvement in attempts to control the agenda.

Appearing on March 21, 1995 before the House of Commons Committee on Foreign Affairs and International Trade, in connection with his appointment as Ambassador to the United Nations, Mr. Fowler stated that, in his role as Deputy Minister of National Defence, he made all efforts necessary to ensure that he was aware of all matters that should be brought to his attention as Deputy Minister and then made sure that the Minister was, at all times and in a timely fashion, made aware of such information.²⁵ On the other hand, Mr. Fowler told the *Toronto Star*, on September 20, 1996, that details of the March 16th torture and killing could not be made public until investigators “had established what happened that night in Belet Huen” and that, in any event, it “wasn’t his job as Deputy Minister to tell (Minister) Campbell what Canadian soldiers had done.” As he was quoted:

It sounds like I’m passing the buck and I hope you will agree that I’m not, but I was never responsible for telling the Minister what the troops did or didn’t do.²⁶

We would have asked the Deputy Minister what kinds of matters he believed should have been brought to his attention; the nature of the efforts he made to ensure he was aware of those matters; and what categories of information, of which he was aware, he ensured were forwarded to the Minister and when he did so. We would have attempted to probe, with the Deputy Minister and also the CDS and the Judge Advocate General, what specific information they had about the March 16th incident and “what happened that night”; when they learned it and by what means; and whether any of them withheld any of the information they learned from the Minister or from each other, because it fell within the definition “what the troops did or didn’t do” or, for that matter, for any other reason. We would further have explored who, in their view, would have had the responsibility to advise the Minister of that information and to decide what information might be withheld, and whether any of them took steps to ensure that the responsible official did advise the Minister. We would have inquired whether, in their view, the commission of serious criminal acts, breaches of international law, or breaches of the Geneva Conventions by Canadian troops would have or should have been included in the category “what the troops did or didn’t do”, so as to justify a decision to withhold that information from the Minister. We would have asked them what information about the March 16th incident the Minister was in fact told or should have been told and when, to enable her to carry out her duties, under the *National Defence Act*, to direct and manage the Canadian Forces.

We would also have considered whether there were ambiguities in the definitions of these leaders’ responsibilities and changes in legislation or policy that might be appropriate now to clarify them. We would have

questioned witnesses about, and brought the former Deputy Minister's attention to, documents and information in our possession that could support a conclusion that the former Deputy Minister issued directions related to military operations and the conduct of the troops, and could suggest that, even if he states now that he did not have certain responsibilities, powers or duties, he nevertheless, over time, may have usurped them.

We would have inquired whether the opinion or views of the JAG were sought or offered on these issues or on courses of action proposed by senior officials during the relevant period and what the content of any advice given might have been.

In sum, we would have explored and revealed what the former Deputy Minister, the former CDS, the DCDS, the former Minister and the Judge Advocate General in fact knew or were advised about the March 16th incident at material times; when they knew it; what efforts they made to obtain information about the incident; and what they did with information they did receive. We could not explore what steps were taken by senior officials either to inform or conceal information from the Minister, or to ensure the Minister was informed. We would also have wanted to ask these officials and others what effect the directive to keep a low profile, issued only two weeks earlier, might have had when they came into possession of 'sensitive' information or information they believed might damage the Minister's political interests or aspirations. The answers to these questions would ultimately have allowed us to consider and possibly reach conclusions about more fundamental issues directly relevant to the terms of reference, including the response of senior leadership to problems arising out of the deployment; whether there was an attempt to cover up information about the March 16th incident; and, if there was a cover-up, whether it represented an effort, even if misguided, to protect or promote the career or ambition of the Minister of National Defence or to protect the image and reputation of the Department of National Defence. We would have explored whether, and to what extent, any attempt to cover up, if established, might have had more fundamental, systemic roots in the culture of the military that had evolved at the time, a culture that had perhaps become excessively secretive and inward-looking, alienated from the surrounding society; that had come to tolerate a progressive erosion of its moral and ethical standards, lawlessness, a lack of discipline, and the dominance of careerism; and that may have developed a hostility to the 'civilian' values of respect for the rule of law and accountability.

We also do not know the purpose or content, or the use the Minister of National Defence made, of lists of issues "that could be sensitive if not handled carefully", which the Deputy Minister directed all group principals to prepare at the DEM of March 1, 1993 or whether, contrary to Mr. Fowler's assertion, those lists might have included reference to "what the troops did or

didn't do". At the DEM of March 8, 1993, the Deputy Minister indicated that the lists were discussed at weekly Monday afternoon meetings held with the Minister. We asked to be provided with the lists but were told they could not be located. It would appear that even the copies retained by the various group principals who prepared them could not be located. The lists and issues clearly were discussed regularly with the Minister. Did the Minister ask, or perhaps even direct the former Deputy Minister to issue the directive at the DEM to produce them? We would have inquired, of appropriate witnesses, whether information about the incidents of March 4th and March 16th, of which the Minister to date has denied knowledge, was considered sensitive enough to be included in the lists and discussed at the weekly meetings. We would have questioned appropriate witnesses about what was thought to be 'sensitive' and what 'careful handling' meant or was intended to mean, in practice.

Further, although a Somalia briefing was a regular feature of almost every DEM before March 1993, our review of the DEM records from March 1993 onward revealed a striking absence of references to Somalia-related issues. We would have explored the reasons for the change, whether it was a response to the specific instructions of specific officials, and whether it was a component of the "careful handling" policy applied to sensitive issues that was described at the DEM of March 1, 1993. Finally, we would have questioned why, when there seemed to be such intense concern at NDHQ to be fully apprised of and to manage and discuss sensitive issues in a timely way, officials there at the same time seemed unable to accomplish the same goal in relation to information about incidents occurring in Somalia.

Ms. Campbell has asserted publicly on numerous occasions that, although she was briefed the next day that a death had occurred, it was not until March 31, 1993, that she learned that criminal conduct of some kind might have been involved; that it was only on that date that she first learned that Shidane Arone had been tortured to death; that soldiers, including MCpl Matchee, were being investigated for his murder; and that 'trophy pictures' had been taken of soldiers and the body.²⁷ Ms. Campbell asserts in her memoir that, on March 17, 1993, the CDS and the DM together briefed her in her office about the death of Shidane Arone and that she was told only that Mr. Arone had been apprehended trying to rob the Canadian camp in Belet Huen and was later "found dead in his cell". She states she was further told that there had been a scuffle at the time of his arrest and that his injuries did not appear serious enough to explain his death. The Minister asserts that it was suggested that some sort of pre-existing condition may have caused his death and that she was told that an investigation would be carried out. She asserts that "no indication was given to me that there was anything to be concerned about" and that she asked to be kept informed. The Minister was

also informed of MCpl Matchee's suicide attempt, but asserts that "no connection was made between the death of Arone and the attempted suicide of Matchee".²⁸ Later in her memoir, she states that Adm Anderson said, in the days following, "that the department knew as early as March 18th of possible criminal intent in the death of Arone" and thereby led the media and opposition to suggest she was engaged in covering up what she knew about the death. She also states that she did not know why, as Minister responsible for administering the Canadian Forces, she should first have learned the CDS's views on the subject from a magazine. Further, although acknowledging that as Minister of National Defence she held a position in the military justice hierarchy as well as having responsibility for the administration of the Canadian Forces, she could not understand why the CDS could express himself in a way that she had been advised was inappropriate for the Minister.²⁹

Therefore, the former Minister has suggested that, although the chain of command knew criminal intent was involved on March 18th, she was not informed of criminal implications until March 31st. In the alternative, the former Minister suggests that, if she was informed before then, she was somehow constrained in revealing, or intimidated not to reveal publicly what she knew. We would have questioned her more closely about what she knew and when; what she believed or now believes she should have known or been told and when; and what she might reasonably have inferred from the information she did obtain. For example, we note that Marianne Campbell, a policy adviser to the Minister at the time, states in an affidavit dated January 26, 1997, and filed in our proceedings that on or soon after March 19, 1993, she reviewed a March 19th memorandum sent to her office under the signature of the DCDS, copied to the DM and others, that stated that, on the advice of the Commander, Canadian Joint Force Somalia, the DCDS had directed that a Military Police investigation be conducted into the events surrounding Mr. Arone's death in custody; that an investigation team of two Military Police and a JAG-appointed defence counsel would arrive in theatre March 23, 1993; and that, as a result of the CO's ongoing investigation, a master corporal had been placed under close custody the previous afternoon, later attempted suicide, and remained unconscious. The memorandum further stated that the role of the master corporal in the incident was unknown.³⁰

We would have asked whether this memorandum was passed to or discussed with the Minister and whether the references to the dispatch of a JAG-appointed defence counsel and the information that a master corporal had been placed under close custody "as a result of the CO's ongoing investigation into this matter"³¹ alerted or ought to have alerted the Minister, who had been Minister of Justice and Attorney General for a number of years, that the death and MCpl Matchee's situation were connected and that the

investigation might be taking on a criminal dimension. We would also have explored the efforts, if any, the Minister made or directed her staff to make to learn more before March 31st. We would have asked the CDS what information, from what source, led him to conclude by March 18th, and later disclose to the media, that criminal intent was involved in the March 16th incident; who, if anyone, he discussed his conclusion with at the time; and what efforts, if any, he made or directed his staff to make, to obtain and to disseminate the information received to appropriate officials. We would have asked the former Minister and others what proportion of her time was being spent attending to her ministerial responsibilities, as opposed to planning for her upcoming candidacy for the leadership of her party, and whether the time spent on the latter might have prevented her from being available to receive or digest information or otherwise attend to departmental business in a timely way.

Disturbing events and conflicts among personnel are disclosed in the affidavits of John Dixon and Marianne Campbell, both policy advisers in the office of the Minister at the time. Both affidavits were filed in our proceedings in late January 1997 and were appended to their applications for standing before our Inquiry. The affidavits raise questions about the timeliness and adequacy of information about the March 16th incident provided to them by the chain of command. They allege that the Department mounted a campaign of misinformation or cover-up in relation to the March 16th incident. The affidavits refer to the destruction of documents by the former Deputy Minister of DND and the former CDS and state that an assistant to the former CDS attempted, unsuccessfully, to induce the Minister's Chief of Staff to destroy documents; that an officer in the office of the Judge Advocate General wrote a note regarded as a serious threat to the Minister; that Military Police were tasked to seize and destroy computer equipment in the residence of that JAG officer; that the Minister, in a telephone conversation, directly alleged to the Deputy Attorney General that a note sent to her by that JAG officer amounted to "intimidation and blackmail"; that the JAG officer, in a note written on November 2, 1994, admitted knowing, on March 26, 1993 that members of 2 Commando may have been involved in torture; that the same JAG officer's assertion on November 22, 1994 that the Minister's staff were given this information on March 26, 1993 was an "utter and complete falsehood";³² that the failure to pass on this information to the Minister or her staff until March 31, 1993 was evidence of a cover-up; and that such withholding of vital information by senior officials made the Minister vulnerable to allegations that she was a party to a cover-up.

We would obviously have explored these allegations in greater detail. We would have inquired into the relationships, both personal and professional, that developed between the offices and personnel of the JAG and the Minister;

and also among the offices and personnel of the JAG, the CDS and the DM. We would have sought the testimony of Capt (N) Blair to hear his reaction to Mr. Dixon's allegations and to discuss his own apparent statement that the Minister's advisers were told of torture and the involvement of 2 Commando members on March 26th. If the Minister's staff were told on March 18th or March 26th, did they choose not to tell the Minister, or did they follow the Minister's instructions, direct or tacit, not to tell her? Or, was the former Minister not available to receive the information because of other commitments? If the Minister did not know until March 31st, did the DM or the CDS keep the information from her? What information about the incident passed between Somalia and NDHQ, and to whom was that information distributed?

We would also have probed into ambiguities, inconsistencies and omissions in the affidavit filed by Mr. Dixon, and between his affidavit and related public statements of the former Minister. For example, Mr. Dixon states in his affidavit that after he became aware of the allegations about destruction of documents and his own perception of threat to the Minister described earlier he "wrote a note to Minister Campbell about the affair."³³ However, this note³⁴ contains no reference to an alleged destruction of documents by the CDS and the DM or to a threat to destroy computer equipment, or any suggestion that Mr. Dixon perceived that Capt (N) Blair's note amounted to a threat to the Minister. Mr. Dixon states in his affidavit that he told the Minister about these matters on an unspecified date when he "next had an opportunity to physically meet with her".³⁵ He asserts that the Minister was "thunderstruck",³⁶ and she immediately telephoned John Tait, the Deputy Attorney General of Canada, read Capt (N) Blair's note to Mr. Tait, and alleged to him that it amounted to "intimidation and blackmail".³⁷ However, the former Minister, in her memoir, does not mention having telephoned Mr. Tait and alleging intimidation and blackmail, or that Mr. Dixon told her about document destruction by the CDS and the DM and an attempt to have him destroy documents. She states only that, on reading the note, she "hit the roof" and sent her Executive Assistant, Richard Clair, to see the Deputy Attorney General to seek legal advice of a better quality than she perceived she was getting from the JAG. Her memoir, although referring to her pursuit of a request made to the Department of Justice about her "options in pursuing the Somalia issue",³⁸ does not refer to any further pursuit of a resolution of the issue that had purportedly caused her so much consternation.

It is interesting to note from these events the reluctance of the parties to commit accusations of serious wrongdoing to paper at the time and the absence of any such reluctance now. We would have explored, further, what Ms. Campbell was told by Mr. Dixon or other staff members about these matters and when she was told. We would have considered whether Capt (N) Blair's note could reasonably have been regarded as containing a 'threat' to the

Minister. We would have questioned her about the alleged telephone call to Mr. Tait and whether she made the allegations to Mr. Tait that Mr. Dixon has sworn she did. If she did make the allegations, what did Mr. Tait do about them? We would have asked relevant witnesses whether Mr. Dixon at any time advised Ms. Campbell, either in writing or orally, of the alleged destruction of documents, the demand that he should destroy documents, or that he perceived a threat to her in the note received from the office of the JAG. We wonder why no suggestion that he did is made in Ms. Campbell's memoir or Mr. Dixon's note to her, or why she did not mention, in her memoir, her perception of a threat and the call to Mr. Tait. We note that, in a statement to the press on January 31, 1997, Ms. Campbell stated that she did see Capt (N) Blair's note as a threat at the time.³⁹

We would have explored why nothing, apparently, was done, at the time or subsequently, to pursue further the various serious allegations made by Mr. Dixon if he in fact communicated them to the Minister and the Minister then communicated them to Mr. Tait. The answers to these questions might have ultimately affected assessments that we cannot now make about the handling (or mishandling) of information by senior officials at the time of the Somalia deployment; the reason why information was handled as it was; the attitudes of those officials toward information management and recording generally; and their attitudes toward the legal and policy requirements imposed on them in relation to their handling, retention and disposal of documents. Such evidence would have enabled us ultimately to draw conclusions about the relationships between these alleged events and the actions of senior leaders and their staff and also about the more fundamental issue specified in the terms of reference, the response of the chain of command and senior leadership to the problems arising from the Somalia mission and whether the response might have included an attempt to cover up information about the March 16th incident.

Finally, one important issue with systemic dimensions was raised in this material, and its resolution might have been most relevant in determining recommendations relating to the fundamental issue of the appropriate roles and functions of the Minister of National Defence in relation to the military justice system. The conflicts described above flowed from an apparent disagreement that developed between the Minister's office and the office of the Judge Advocate General about the extent to which the Minister could seek, obtain, or publicly disclose information about incidents occurring in Somalia, in light of the duties she might have been called on to perform within the military justice system in relation to those same incidents and the implications of doing so. The Minister received opinions from the JAG in essence warning her (or, as some have alleged, threatening her) that seeking or obtaining information might be construed as attempting improperly to

exercise political influence over the course of military justice proceedings. The Minister and her staff, for reasons that are not entirely clear, disagreed with or were not satisfied with these opinions. The affidavits filed in our proceeding suggest that this problem was a matter of serious, if not all-consuming concern to the Minister and her staff, during the whole period of her tenure as Minister. This concern eventually caused her, on April 22, 1993, to formally direct the Deputy Minister to seek an alternative opinion from the Deputy Attorney General on the matter.⁴⁰ The former Deputy Minister wrote to Mr. Tait seeking the opinion on the same day.⁴¹ However, after this letter was sent, the concerns of the Minister and her staff seem to have evaporated completely. We would have questioned witnesses to ascertain whether the opinion was ever produced and if not, why not, and if the matter was of such concern, why no effort was made to have it produced or to pursue the issue further and have it resolved. Further, we presume that, if the matter was of such great concern then, it would continue to be of concern even now. However, we note that the Hon. Doug Young did not even ask the special panel he commissioned as Minister of National Defence to review the military justice system to look into the matter. Their report did not address the issue.

Perhaps the most striking aspect of these events that would have deserved further examination was the relative indifference displayed by senior officials to the fact that a brutal and senseless torture and killing had occurred, an indifference that contrasted sharply with their concern about publicity the incident might receive, the management of information about the incident, and the potential effect publicity might have on the image of the Canadian Forces.

The March 17th Killing of a Red Cross Guard

On the day following the torture and killing of Shidane Arone, a guard at the compound of the International Committee of the Red Cross was wrestling with a Somali national and his weapon discharged into the ground near a CF soldier. The Canadian fired on the guard and killed him.

The Commander CJFS, Col Labb  , had decided to allow non-governmental organization (NGO) guards to carry weapons for defence of their compounds. CF soldiers were providing security for convoys delivering supplies to NGOs. We received information that no co-ordination plans existed between these armed units. It was not clear who had responsibility for what area, or what the arcs of fire would be, and there seemed to be no communication link between them or, if there was one, it was not used. When a crowd of protesters gathered around the ICRC compound on March 17, 1993, the convoy proceeded to make the delivery, even though they were obviously outnumbered. A person who was actually trying to maintain the security of the

compound and working in conjunction with the CF was shot and killed by a Canadian soldier.

This incident raised a number of questions. Was there any co-ordination of plans between the NGOs and the CF regarding security and use of weapons during delivery of supplies? If not, why not? Was there adequate training regarding the deliveries? Why was the delivery not aborted when the security problem became apparent? Why did the description of the guard who was shot and killed change in reports written about the incident? The guard was carrying his weapon with the approval of the CF. Why then, after initial situation reports described him as a Somali or ICRC guard, did the briefing note forwarded soon afterward by the DCDS, VAdm Murray, to the Minister of National Defence, describe the guard as an “armed thug”?⁴² As is the case with the March 4th incident, we again see the body of a report about an event embellished with a judgemental, pejorative description of the person shot and killed. We sense a warning sign of ‘spin’, as we did in relation to the March 4th incident, when those reporting on an event felt compelled to describe Somali civilians as “armed thugs”, rather than simply setting out the facts. We would have explored whether the investigation of this incident was defective and whether the defects bore similarities to those found in the March 4th investigation. Was there also reason, in this case, to question the wisdom of relying on the reporting of an incident by the very parties who later might have been accountable for any failures in planning, preparation, or training in relation to the same incident? One would think that, in both peacekeeping and war, the accuracy of information about events and incidents is and would be considered vital to a military organization.

The Detention of Alleged Thieves

We are aware of evidence that, in early January 1993, Col Labb   advised LCol Mathieu that he did not want to see Somali nationals detained in a fashion that would humiliate them. Yet the practice seems to have continued through January and February. In fact, there is evidence that it continued in May at the Royal Canadian Dragoons camp in Matabaan. This clearly suggests some kind of breakdown. We would have explored further this evidence as it would have related to the clause in the terms of reference requiring us to consider the attitude of all rank levels toward the lawful conduct of operations, including the treatment of detainees. We would have examined whether any apparent mistreatment of detainees reflected a communication problem, a lack of discipline, individual or personal failure, systemic defects, or whether it was, in fact, reasonable in the circumstances.

THE ACTIONS, DECISIONS, RESPONSIBILITIES, AND ACCOUNTABILITY OF SENIOR LEADERS AND OFFICIALS

We therefore could not conduct the thorough examinations and analyses of some of the significant incidents in Somalia during the deployment that were mandated by various clauses of the terms of reference, particularly paragraph (k), which asked us to inquire into the manner in which the Task Force conducted its mission and tasks in theatre; other paragraphs that indirectly required us to identify operational, administrative, and disciplinary problems encountered in theatre before assessing the responses of the chain of command and others to those problems; and specific clauses referring to issues transcending individual incidents, such as the "attitude of all rank levels towards the lawful conduct of operations, including the treatment of detainees",⁴³ an issue that could be assessed only by examining a possible pattern of conduct and attitudes of CF members over a longer period of time.

Many unanswered questions relating to the conduct of senior leaders and officials have already been raised in the preceding discussion focusing on incidents. However, it would ultimately have been necessary to consider the actions and decisions of senior leaders and officials from the wider perspective of their personal responsibility and accountability for the planning and execution of the mission as a whole and the actions and decisions involved. For this purpose, we would have been required to focus on the adequacy with which they discharged the duties and responsibilities of their respective offices and commands. This would have required the application of a wider perspective transcending specific incidents and events. We have already stated our view that assessments of these matters are an essential prelude to meaningful renewal of the Canadian Forces. We had painstakingly prepared the groundwork for an examination of essential issues involving senior leaders and officials, but without the necessary calling and questioning of witnesses we are unable to draw all the conclusions on these vital issues. At the risk of repetition of some matters already considered in our discussion of questions arising out of incidents, we can only define some issues and ask some questions.

We would have examined the roles, duties, authorities and responsibilities of these officials and how they and their offices managed information and made decisions. Ultimately, we would have assessed whether, and to what extent, organizational decisions and methods of operating within NDHQ, at senior levels affected accountability and responsibility for the actions and decisions of officials and leaders involved. We would have examined whether there were effective checks and audits on the actions, decisions, and record

keeping of senior officers and executives, and whether any weaknesses in this regard may have contributed to poor decision making and provided opportunities for senior officers and officials to obfuscate their actions and decisions, as well as accountability for those actions and decisions. We would have explored whether, and to what extent, the so-called ‘diarchy’ of the CDS and DM at the pinnacle of NDHQ obscures accountability for actions and decisions, particularly of these two leaders, and the ultimate effect such a state of affairs might have on the ability of Parliament to supervise and control the activities and management of the Canadian Forces and the Department of National Defence.

To demonstrate the functioning of the organizational relationships and decision-making processes in practice, and to demonstrate how authority was exercised by relevant leaders and officials, and how decisions were routinely made in this joint organization, we would have examined the actions and decisions of the leaders in relation to selected critical issues, for example, the establishment of personnel ceilings for Operation Deliverance, the decision to order or authorize a Military Police investigation of an incident, and so on, by hearing the testimony of the leaders involved, their executive assistants, and members of their staffs.

The Deputy Minister

We would have considered the extent to which the Deputy Minister is accountable and responsible for the actions and decisions of officials in the Department of National Defence and the extent to which, by custom and practice at NDHQ, the DM is jointly accountable and responsible with the CDS for actions and decisions within NDHQ affecting the CF and DND.

We would have probed the extent of the Deputy Minister’s influence on decisions taken at NDHQ, by examining the role he played in NDHQ committees, particularly the DEM, and by reviewing his actions and decisions at NDHQ regarding recommendations to Ministers and to the Government in relation to specific issues that arose in relation to the mission and its aftermath. This includes, among other matters, the composition of the force, the personnel ceiling, the in-theatre public information program, the conduct of investigations, the formation and composition of the internal Board of Inquiry and the disposition of its findings, the formation of the Somalia Working Group, Directorate General Public Affairs, reactions to criticisms of DND and NDHQ, and the management of the release of information under the Access to Information Act. Evidence of the Deputy Minister’s actions and decisions in relation to these matters would have enabled us to judge the extent, if any, of his accountability and responsibility for many significant decisions in the CF, DND and NDHQ, notwithstanding the roles and func-

tions nominally assigned to him as head of the Department; to assess whether, and to what extent, he may have usurped aspects of the authority and responsibility of the CDS in the period leading up to, during and after the mission, and acted, in important ways, to “control and administer” the CF and should therefore have been correspondingly accountable for his decisions and actions in this regard; to assess to what extent, if any, the CDS might have abdicated some or all of his responsibilities in favour of the Deputy Minister; and to assess whether, and to what extent if any, the lines of responsibility at NDHQ may have been blurred because of the ambiguity inherent in the NDHQ diarchy, thus preventing anyone from being accountable, in practice, for actions and decisions taken at NDHQ.

We would have examined the extent, if any, to which the Deputy Minister was responsible for decisions on the strategies, plans and responses to ‘incidents’ involving the CF in Somalia, including investigations, reports to Ministers, and responses to requests for information about them.

We would further have examined the extent, if any, to which, under his direction, the management of the Department and the control of information flowing within and from it came to be linked; and the extent to which the Deputy Minister’s management of the information flow may have been used, with his approval or concurrence, or under his direction, to implement damage control in relation to, or a cover-up of information about, the incidents occurring in Somalia, at the expense of addressing operational deficiencies that may have been involved. We would also have considered what role, if any, he played in the recruitment of staff and the control of staff agencies concerned with the information flow to and within NDHQ generally during the Somalia deployment and, later, in DGPA. We would further have probed whether he personally participated in any cover-up or process of damage control with respect to the incidents occurring in theatre or with respect to the transmission of information to our Inquiry. We would have considered his role, if any, in the alteration or destruction of documents at DGPA and the extent to which he might have been responsible for problems, failures, or deficiencies in relation to the management of the Department’s responses under the *Access to Information Act*.

The Chief of the Defence Staff and the Deputy Chief of the Defence Staff

We would have examined the extent to which the Chief of the Defence Staff and the Deputy Chief of the Defence Staff holding the offices at relevant times adequately carried out their respective responsibilities for “control and administration” of the CF under the *National Defence Act* and in relation to

the Somalia mission, including the adequacy of their involvement in decisions about operational matters, including the Canadian Forces plan, force structure, command arrangements, orders issued to Col Labb  , the Rules of Engagement, and the logistics plan. We would have probed further their participation in any cover-up or process of damage control with respect to the incidents.

We would also have assessed whether the occupants of these offices during the deployment adequately monitored and took appropriate measures to respond to and rectify logistical, support, operational, disciplinary, and other problems that arose in Somalia during the deployment, for example, the incidents that occurred and the problems that became apparent with respect to the ROE. We would have considered their involvement in the determination of how incidents would be investigated and the adequacy with which they monitored and reported on the progress of the investigations as well as the adequacy with which they provided information and timely advice to the Minister of National Defence with respect to the incidents and operational matters generally. We would have considered whether, and the extent to which, they might have participated in a cover-up or process of damage control with respect to the incidents or other problems that occurred in theatre. Finally, we would have considered the extent to which the CDS signalled a view that political and public affairs factors should predominate over military considerations when, in the summer of 1993, he acquiesced in the decision to turn over the ‘Somalia file’ to the Associate Assistant Deputy Minister (Policy and Communications), rather than to the Vice Chief of the Defence Staff, the DCDS, or the Assistant Deputy Minister (Personnel).

The Minister of National Defence

The Minister is responsible and accountable to Parliament for the significant actions and decisions of leadership within DND and for the outcomes of the decisions and actions taken in response to the operational, administrative, and disciplinary issues encountered during and after the deployment to Somalia. We would have explored whether the Minister adequately fulfilled her responsibility to “preside” over the Department of National Defence; to manage and direct the Canadian Forces, in respect of the deployment to Somalia, as required by sections 3 and 4 of the *National Defence Act*; and to account to Parliament for the manner in which she, the Canadian Forces, and the Department performed their tasks and carried out their duties and responsibilities.

We would have received evidence to help us assess whether the Minister diligently attended to her duties in relation to the deployment after she assumed office in January 1993. We would have explored whether she took

adequate steps to ensure the receipt of the information and advice necessary to enable her to carry out her duties. We would also have explored whether the Minister adequately informed Parliament of what she knew about the incidents in Somalia and the response to them at NDHQ. We would have considered whether she actively participated in or approved or tolerated, in any way, a cover-up or process of damage control with respect to the incidents.

The Judge Advocate General

In addition to questions already noted that we would have posed to the Judge Advocate General in relation to the March 4th incident, we would have questioned him and other witnesses about the manner, adequacy and effectiveness with which he generally carried out his functions, duties and responsibilities in relation to the deployment and its aftermath. At the time, the Judge Advocate General essentially had four roles: to superintend the CF system of courts and military justice, to act as senior legal adviser to the CF, to act as senior legal adviser to the Department of National Defence, and to manage and direct the legal branch. We would have considered his role, and the role of legal officers under his supervision, in relation to the investigation of serious incidents; and the legal advice that may have been sought of and given by the office of the JAG, in relation to actions and decisions taken and problems that arose throughout the deployment. We would have inquired into his role in relation to and advice he may have given with respect to the duties to be performed by legal officers and the numbers to be deployed; the deployment and tasking of Military Police; decisions made as to whether and what kind of investigations of incidents should be conducted; monitoring of the progress of the investigations; the decisions made as to who should and should not be charged or otherwise dealt with in relation to incidents that occurred; the role he may have played in the development and understanding by the troops of the ROE and in bringing to the attention of the CDS, all other CF commanders, the Minister, and other Department of National Defence officials, Canada's obligations under the Laws of Armed Conflict; and the role JAG lawyers may have played, under the direction of the Deputy Minister, in preparing the terms of reference for the internal Board of Inquiry created to examine the problems that arose during the deployment.

We would have inquired into whether the duty of the JAG to provide legal support to peace support operations would also have included an obligation to conduct a legal review of, and input into, the ROE, the nature of any formal process for such review in existence at the time, and whether it was followed. We would have asked about any authority (or the adequacy of any authority) the JAG might have had to ensure the legality of the ROE.

We also would have inquired as to whether recommendations on the Somalia ROE were made by, or on behalf of, the JAG before, during, and after the deployment and, if so, what they were. We would have asked the JAG to explain evidence that the DCDS, in early April 1993, indicated that the JAG had reviewed the ROE and was satisfied they were suitable to the mission, whereas a legal review conducted by LCol Watkin on April 14, 1993 suggested that legal officers were not sufficiently involved and that the ROE contained gaps and ambiguities.

We would have explored further information we received through documents that the JAG has a duty to oversee the review and validation for legality of headquarters and command operations, plans, and orders, and to provide legal guidance in the execution of those plans and orders. How did this process occur within the Somalia context? Were proposed operations, plans, and orders checked for conformity to the rule of law? If so, what was the process and what was done? To what extent, if any, was the JAG's involvement subject to the discretion of the CDS or other military authority? Did the JAG identify any problems in relation to the roles assigned to legal officers in theatre?

We would have considered the perceptions of the JAG about the necessity for independence of his office and functions from the chain of command and NDHQ officials; the extent to which the independence of the JAG was maintained and reinforced in the period surrounding the deployment; and whether he identified any impediments, policies or practices or conflicts of interest that impaired his ability to maintain an appropriate measure of independence. As previously indicated, we would have explored the extent, if any, to which solicitor/client privilege may have been used to conceal the extent of knowledge of the facts by the chain of command. We would have explored who could properly give and who actually gave instructions or orders on specific matters to the JAG at the time and to what extent the JAG's office was subject to and accommodated undue or unlawful command influence. We would have explored whether proper distinctions were drawn, particularly in relation to the investigation of conduct at NDHQ relating to the handling of Access to Information Act requests, between advice given by the JAG to the CDS personally as opposed to in his official capacity. Further, in light of information we received that, after 1990, the JAG regularly attended the daily executive meeting, we would have sought the views of the JAG and others as to whether such attendance was and is appropriate, having regard to the possibility that matters might be discussed on which the JAG might later be called on to exercise his role in relation to the management of the military justice system. We would also have explored the role of JAG in reviewing and advising on the release by the CF and DND of information about the deployment and the incidents and investigations that occurred.

Allegations of Cover-Up

We have previously referred to our ruling of August 3, 1995, in which we stated our view that the issue of cover-up was an example of a matter we could investigate and were investigating, that might be "of an ongoing nature". We noted that decisions could still be taken to destroy or suppress existing evidence and that it was within our terms of reference to investigate any such decisions to determine whether they were or are part of an alleged cover-up. We have also noted the statement of the Minister of Justice agreeing with our interpretation of the terms of reference in the House of Commons on April 30, 1996. We have considered, in detail, evidence relating to the response of the chain of command to allegations of cover-up in relation to the March 4th incident. Regrettably, we have concluded that efforts were made, in various ways, to cover up or conceal information about that incident.

However, we could not, even in relation to the March 4th incident, explore the full scope of cover-up efforts and of participation in the conception and execution of those efforts. In considering this question we would have received and addressed evidence clarifying the relationship to possible cover-up of a number of actions, decisions, and issues arising during and after the deployment, including

- (a) the facts, already discussed, that have come to our attention, and further evidence that might have come to our attention, with respect to the management of information relating to the March 16th incident;
- (b) the manner in which investigations of other significant incidents were conducted and disposed of;
- (c) the extent to which the internal Board of Inquiry commissioned to investigate the problems that arose out of the deployment may have been structured and used to avoid focusing on the accountability and responsibility of the senior leadership of the CF and DND, taking into consideration criticisms that were later expressed about its structure, process, and conclusions;
- (d) recording, record-keeping, and record-disposal policies and practices that may have been implemented either in theatre or at NDHQ to preclude investigation into facts and accountability for conduct, actions, and decisions, for example, the already noted change in recording of information at daily executive meetings as incidents in Somalia began to occur;
- (e) the possible manipulation of legal mechanisms, such as solicitor/client privilege and Cabinet confidence, to preclude scrutiny of documents and disclosure of information contained in them;⁴⁴

- (f) as already referred to, the selective leaking of information designed to discredit individuals having views or willing to disclose information deviating from ‘official’ positions; and
- (g) advice and comments provided to the Government, by senior officials in the very Department under investigation, that may have been designed to induce the Government to curtail our investigations and proceedings, or at least to create an atmosphere that would make the Government receptive to taking such action. In this regard, we refer particularly to speaking notes provided by LGen (ret) Fox, then head of the Somalia Inquiry Liaison Team, to the CDS, Gen Boyle, and the DM Mme Fréchette, at the request of the CDS, to be used by them in discussing, with the Minister of National Defence, our request for an extension dated March 6, 1996, in which LGen Fox, among other things, suggested that we were embarking on a “dangerous road” by not accepting or by questioning the original Military Police investigations into the incidents; that any versions of events deviating from the conclusions reached in investigations already conducted would only be “speculative”; and the fact that we were challenging the validity of previous investigations in order to “prove cover-up”. In addition, the speaking notes suggested that our work was becoming irrelevant because “change was already taking place in the CF” and “no new facts [were] being uncovered”.⁴⁵

SYSTEMIC ISSUES

We would have addressed one further systemic issue. We would have considered comprehensively the issue of prosecutions in the military justice system, including (a) jurisdictional issues, such as those surrounding the choice of military or civilian jurisdiction; (b) issues relating to the choice of trial, including summary trials by commanding officers, delegated officers, or by referral to a superior commander; (c) the process of summary trial, including the role of the CO or delegated officer; the status of the prosecutor; the procedures involved, including, among others, the right to an assisting officer; and (d) the process of the general court martial, including issues relating to the appointment and role of the prosecutor, the military trial judge, and the panel; the appointment process; the verdict that can be rendered by majority vote; the right to counsel; sentencing; and appeals.

CONCLUSION

Although many other questions might be raised about the conduct of the Somalia deployment and the more than 100 incidents of varying seriousness that occurred related to it, we always recognized that our mandate was not to try to identify every possible issue and answer every question. Our terms of reference directed us to address specific issues, and we attempted to confine our investigation to significant matters that would enable us to answer the specific questions posed.

Some of the general but perhaps most profound questions are these: What was the motive for the torture and killing of Shidane Arone? How could the values and culture of the Canadian military and its leadership have allowed the atrocities in Somalia to occur and tolerate subsequent attempts to cover them up? Why did so many soldiers look the other way in relation to the incidents of March 4th and March 16th? Why did any ethical sense or sense of compassion for the victims appear to be almost totally absent during the deployment and its aftermath?

How did discipline and cohesiveness in some parts of the Canadian Forces become dysfunctional to the point where walls of silence were erected, accountability was shunned, and little value, if any, was perceived in admitting and confronting errors and deficiencies? Why have so many in the junior ranks been held to account or punished, while the higher ranks have escaped accountability?

The death of Shidane Arone, the initial stimulus for our Inquiry, might have been given a greater meaning had Commissioners been permitted to complete their work. The same might also be said of the demise of the Canadian Airborne Regiment, the ending of military careers, and the sullying of the good name of Canada's soldiers. As Commissioners, we were given an opportunity to turn all of this to a greater purpose. We were in a position to allow the next generation of Canada's soldiers and the Canadian public to remember this as the point in our history when we corrected the mistakes of the past and resolved the systemic problems that appear to have plagued the Canadian Forces long before Somalia.

The Government apparently believes that the problems with which Commissioners have wrestled for the last two years are simply a matter of issuing new policies and guidelines. This is evident in its decision to truncate the Inquiry and to proceed with change in the Canadian Forces and the Department of National Defence behind closed doors, without reference to Commissioners' conclusions and recommendations, and without exploring such issues as the response of the senior political and military leadership to the problems encountered during the Somalia deployment. As Commissioners

we wish we could share the Government's confidence that this approach will be successful in resolving the problems that led to the establishment of our Inquiry.

All the unanswered questions raised here were on our agenda and incorporated in our work plan when we provided the Government, on November 27, 1996, with various scenarios for the completion of our work that committed us to providing a comprehensive report on all matters in our terms of reference by the end of 1997. This proposal went into considerable detail, outlining a schedule of hearings and providing a list of important witnesses that we would call.

We were confident that we could examine all the issues outlined here in a thorough and meaningful way, and complete our report by the end of 1997. We were fully aware of the need for economy and efficiency in public inquiries when we made this commitment. We had experienced extreme frustration when delays we encountered in obtaining important documents and in investigating reports of the destruction of military records forced us to ask for more time. Had it not been for these unforeseen developments, we certainly would have completed our work in little more than two years from the date of our appointment.

By the end of 1996, we were clearly on schedule to submit a report by the end of 1997 that would have covered all the concerns we have just listed.

NOTES

1. Minutes of a meeting of the Committee of the Privy Council, March 20, 1995, article (s).
2. Press release, March 22, 1995.
3. House of Commons, *Debates*, November 17, 1994, p. 7931, and May 12, 1995, p. 12534.
4. House of Commons, *Debates*, May 12, 1995, pp. 12535–12536.
5. House of Commons, *Debates*, March 28, 1996, p. 1369.
6. House of Commons, *Debates*, April 17, 1996, pp. 1587, 1589.
7. House of Commons, *Debates*, April 30, 1996, p. 2138.
8. House of Commons, *Debates*, May 3, 1996, p. 2308.
9. House of Commons, *Debates*, September 16, 1996, pp. 4224, 4225.
10. House of Commons, *Debates*, September 20, 1996, p. 4499.
11. House of Commons, *Debates*, October 8, 1996, p. 5243.
12. House of Commons, *Debates*, October 9, 1996, p. 5289.
13. House of Commons, *Debates*, December 10, 1996, p. 7314.
14. Order in Council P.C. 1997-456.
15. Document book 127, tab 12, p. 2.
16. Document book 50A, tab 9, p. 2.
17. Allan Thompson, "Liberal aide's leak targeted whistleblower", *Toronto Star*, March 9, 1997, p. A1.

18. In Mr. Thompson's view, the paper trail originated with a memorandum dated November 21, 1994, written by Ruth Cardinal, Director General Public Affairs, NDHQ, to MGen Jean Boyle, at that time Associate Assistant Deputy Minister for Policy and Communications. The memorandum put on the record the fact that the pathology report was released only after a reporter called to request it. Ms. Cardinal wrote that the JAG was consulted on whether the document could be released without a formal Access to Information request and the JAG had given his approval. In another letter to file, the Deputy Chief of the Defence Staff, VAdm Lynn Mason, wrote that "the release of the independent pathologist's report was entirely proper. The pathologists' reports were released only upon receiving a request for them" (Thompson, "Liberal aide's leak targeted whistleblower", p. A1).
19. See Mark Bonokoski, "The Smearing of a Name", *Ottawa Sun*, March 11, 1997.
20. We note the occurrence of other instances of improper leaks of information about individuals who presumed to criticize publicly military policies, conduct, or decisions or attempted to probe military records for information, as well as attempts to prevent some members, for example, Cpl Purnelle, from disclosing information to our Inquiry. A complaint, brought before the federal Privacy Commissioner, that in 1994 the former Deputy Minister, Mr. Robert Fowler, in letters to various government departments, including the Canadian Security Intelligence Service and Revenue Canada, had improperly identified and questioned the motives of an individual who had made numerous Access to Information requests of the department, was held to be "well founded". Also of interest was the treatment accorded Maj Buonamici when he questioned the responses of senior military officers to incidents in Somalia, questioned the exercise of improper command influence over the course of investigations, and sought to expose and counter the 'damage control' policy relating to the March 4th incident. See Jeff Sallott, "Identifying gadfly breach of rules", *Globe and Mail*, March 6, 1997, p. A8; and see generally testimony of Maj Buonamici, Transcripts vol. 176, pp. 36261–36267.
21. DND 395316, 395317.
22. DND 395265, 395266.
23. Exhibit P-181.
24. Testimony of Mr. Gonzalez, Transcripts vol. 58, pp. 11544–11545.
25. House of Commons, Standing Committee on Foreign Affairs and International Trade, *Minutes of Proceedings and Evidence*, March 21, 1995, pp. 19:44–19:45.
26. Allan Thompson, "Fowler calls Somalia coverup 'preposterous'", *Toronto Star*, September 20, 1996, p. A2.
27. See, for example, her memoir, *Time and Chance* (Toronto: Seal Books, McClelland-Bantam Inc., 1997), p. 281.
28. Campbell, *Time and Chance*, p. 281.
29. Campbell, *Time and Chance*, p. 282.
30. Document book 38X, tab 27, p. 1.
31. Document book 38X, tab 27, p. 1.
32. Affidavit of John Dixon, Motion Book Application for Standing for John Edward Dixon, paragraph 41.
33. Affidavit of John Dixon, p. 14, paragraph 35.
34. Affidavit of John Dixon, Exhibit I.
35. Affidavit of John Dixon, pp. 14–15 paragraph 35.
36. Affidavit of John Dixon, paragraph 35, p. 15.
37. Affidavit of John Dixon, paragraph 35, p. 15.

38. Campbell, *Time and Chance*, p. 280.
39. Allan Thompson, "Letter was 'clear' bid to intimidate: Campbell", *Toronto Star*, January 31, 1997, p. 1.
40. Document book 38AA, tab 11C.
41. Document book 38AA, tab 11E.
42. Briefing note for Minister of National Defence (MND), March 17, 1993, Document book 43, tab 11D.
43. Commission of Inquiry, Terms of Reference, paragraph (m).
44. See, for example, Document book 118A, tab 15, suggesting that, with the approval of the JAG, information was set out in a document under the JAG's signature in order to "preserve the protocols of access to info..." in relation to recommendations made.
45. Speaking notes for the CDS and the DM, meeting with MND, "Commission of Inquiry Request for Extension", DND NS 180309, DND 448172-3 (unfiled).



THE MILITARY IN CANADIAN SOCIETY

Just as the Somalia mission has raised the need to examine the relationship between the military and the civil authority, so too has it afforded an occasion to review the relationship between the military and the larger Canadian society. Such a review is important, given the impact of the Somalia expedition on the reputation of the Canadian Forces (CF) and on the esteem in which Canadians have traditionally held the military. This chapter reviews the place of the military in Canadian society; assesses the degree to which the military, as a culture within that society, reflects and represents the characteristics and values of the larger society and the degree to which members of the military may be expected to differ from society; and suggests remedies aimed at returning the military to the position of confidence and trust it has customarily held in Canada.

We take as a given that Canada, as a sovereign nation, will continue to need a professional armed force to ensure its security.

Some readers may view the CF as a monolithic organization. It is not. The CF comprises an army, navy, and air force. Its members are diverse, including both men and women and representatives of the Canadian ethnic mosaic.¹ This chapter concentrates primarily on the army, the combat army in particular. This is a logical consequence of the subject matter of the Inquiry, given its focus on the Canadian Airborne Regiment.

FACTORS AFFECTING ARMED FORCES IN SOCIETY

The military in Canada has been shaped by Canada's unique culture, history, and political ideology. Canadians' support for their armed forces varies over time, often in relation to the degree of perceived military threat. Historically, the general population has held the military in high esteem and celebrated

its achievements. Also, many communities have had special connections with particular military units.² The strength of these ties continues to affect the degree to which people see the CF as an honourable and worthy part of Canadian culture.

On the other hand, a community's trust in, and support of, the military can be ruptured, sometimes dramatically.

There is a popular perception of the military and its place in society. The strength of that perception depends on the level of public awareness, which in turn is affected by the role played by the media. Military leadership must be sensitive to this public perception and work continually to stay abreast of changing attitudes in society. Whenever military leaders ignore their relation to the larger society, they put the relationship between the armed forces and society at risk.

Canadians have had a tradition of valuing peace, order, and good government. However, few Canadians today consider Canada threatened in the traditional military sense. There is no enemy at the gate and little support for those who point to distant and potential opponents. The assumption that Canada is inherently secure yields a certain indifference to questions of military efficiency and readiness. This natural sense of security tempts Canadians to divorce themselves from the details of national defence policy and to treat the strategic direction and the control of the CF as a less pressing concern.³

It has been said that Canadians see themselves as an "unmilitary people" who, in the past, have armed themselves reluctantly and only for good causes.⁴ This self-image was reinforced when Lester Pearson won the Nobel Peace Prize for proposing that the United Nations deploy peacekeeping units between the belligerents in the 1956 Suez crisis.

Since that time, peacekeeping has come to be regarded as a national vocation. Peacekeeping, seen as a neutral, non-violent activity focused essentially on soldiers as mediators, has some considerable allure, since the missions involved generally have some chance of success, do not involve the CF in war-like operations, and present little risk to members of the CF.⁵

Regrettably, in recent times little interest has been shown in our armed forces, and national discussions about defence policy or the operations of the CF have been rare. This relative indifference has been interrupted only occasionally when some significant event captures headlines or when insecurity grips the nation, as it did, for instance, during the FLQ crisis in 1970 and the events at Oka in 1990.

Overall, the military tends to make a faint imprint on the consciousness of many Canadians. There is a risk of this increasing as the size of the CF shrinks and as the Department of National Defence continues to withdraw its bases and stations from urban centres across the country. The CF is increasingly

out of the public mind. More and more, Canadians know less and less about their military, despite the fact that the CF has earned an enviable reputation for its work, and Canadians took justifiable pride in the award of the Nobel Peace Prize to United Nations peacekeepers in 1990.

Members of the CF are often frustrated by the lack of attention paid to the actual circumstances of the armed forces by society's leaders, the media and the public. They are also irritated by the excited response a perceived 'crisis' garners when some event brings a new reality before the public eye. The military, we have been told, feels that, if the media better appreciated the needs and the often stressful and difficult situations facing the CF, there would be a greater public understanding of the actions and responses of the CF at home and abroad.

MILITARY CHARACTERISTICS AND VALUES

A Closed Society?

A number of features of the Canadian Forces make it different from the rest of society. Indeed, the military's penchant for introspection is perhaps a good place to start.

The military is generally held to be a closed society, a unique culture within the larger Canadian community, made so by the special nature of its calling, and by its special ethos and values, which are peculiar to the tasks it faces. Canada's professional soldiers, like those of any liberal democracy during protracted periods of peace, inexorably have come to regard the values to which they must subscribe and the purposes they must pursue as necessary for the effective conduct of operations in the modern world, as being in some sense different from those of society.

Canada's military understandably seeks to conserve values proven on the battlefield by its predecessors. This is in part attributable to the fact that, in general, the values held by the military find their most severe test in combat and, more particularly, because the CF has not been in serious and prolonged combat since the Korean conflict in the early 1950s.

While many institutions tend to be conservative by nature, the military is particularly so. Attempts to preserve values tested decades ago, even as the pace of change in society accelerates, reflect this conservatism. The degree to which society fails to be sensitive to the military's felt need to preserve values that may seem quaint, idealistic, and outdated to the average citizen is troubling for those within the institution. CF members, we are told, harbour an apprehension that only members of the profession of arms understand the nature of their calling or truly appreciate their contribution to the nation.

If this is an accurate portrayal, it can only lead members of the military to harbour feelings of alienation from the larger society of which they are a part. Such feelings can breed a kind of insularity as members seek, from within, an affirmation of the worthiness of the group's endeavours. Another face of alienation may also occur when members limit their commitment to the military by treating their calling as just another job.⁶

Insularity and isolation can produce a resistance to open dealings by members of the military in their relationship with the rest of society. It is not surprising, against this backdrop, to find that military leaders who encounter a critical or flawed incident tend to put the incident in the best possible light, if only to protect their beleaguered profession.

Sustained criticism, such as the CF has experienced as a result of the Somalia mission, arguably has led the military to adopt a siege mentality, to admit to no failures, to countenance no deserters, and to accept no truce.

In our view, one of the profoundly troubling features of the Somalia experience was the failure of leaders to admit, openly and frankly, that problems had developed and that things had gone wrong. The decision to pretend that all was well, despite mounting evidence to the contrary, led to a series of events that seemed to spiral downward, increasingly out of control, until what started as an attempt to control information became 'spin-doctoring', manipulation and, in the end, a cover-up. The casualty in all of this was one of the most cherished of military values — integrity.

Public Affairs and Public Relations

Gen (ret) Gerry Theriault, Chief of the Defence Staff between 1983 and 1986, in an address to the Canadian Institute of Strategic Studies in November 1996, made some important observations on the relationship between the military and the media:

In a democracy, the fourth estate plays an essential role. Media relations represent the Forces' principal channel of communication with the broader public and are difficult only if one believes that they can and must be managed, in the sense that public information and the press can be manipulated.⁷

There is little doubt that the CF should change its approach to public affairs. The Somalia operation has underscored the urgent need for openness and transparency on the part of DND in its dealings with the public. Raising public awareness about the distinct nature and role of the military in Canadian society is, therefore, one of the principal challenges for the future.

There are, we believe, a number of modest but important ways to keep the armed forces more involved with the mainstream of public life. Some of these are new, while others have proven effective in the past.

The reserve force, particularly the militia, traditionally have formed a bridge between the military and the public. Reservists spread across the country bring to their local communities a perspective shaped by military values and the military way of life. The reduction of the reserves, which again is under active consideration, may serve, unintentionally we believe, to weaken that bridge. Any final decision about the future role, size, and importance of the reserve force component should be made with this consideration in mind.⁸

Similarly the cadet movement could have a greater impact on the public consciousness than is currently the case. It is an under-appreciated resource. The cadet movement continues to offer pride in citizenship, self-discipline, and love of country. It prepares thousands of young Canadians for responsible adulthood every year. Unfortunately, the movement is attracting fewer than 60,000 young people at present. An enhanced public commitment to this program is warranted, given the great dividends it can generate for the Canadian public and the military as a whole.

Maintaining strong public awareness of the armed forces reality is a difficult task but, here too, there are a number of groups, associations, and programs whose assistance and effectiveness would be markedly enhanced with a relatively small infusion of funding. The Conference of Defence Associations and its information branch, the Defence Associations Network, and the Pearson Peacekeeping Centre are three examples from among many that possess considerable potential for contributing to public awareness.⁹

Nevertheless, the principal source of greater public awareness of the armed forces remains the media. The Canadian Forces is badly in need of an improved media relations or public affairs policy, one founded on a real commitment to openness and transparency, particularly at times of crisis. Such a policy is unlikely to succeed, however, unless there is an accompanying attitudinal change within the upper reaches of both the CF and DND. As part of this transformation, the free exchange of views between CF officers and the public must be actively encouraged. The beneficiaries of a bona fide policy of this kind will include not only the military but the public and the media as well.

MILITARY VALUES

Purpose of Armed Forces, Their Training and Development

An enhanced public understanding of the military and military matters begins with a firm grasp of the purpose of armed forces. An appreciation must be developed that, in the end, it is the nation's citizens who are responsible for

its national defence. The basic purpose in having an armed force is to provide, when required, for the controlled application of force in pursuit of the national interest. The military may be employed in a range of missions, many requiring no application of force at all, but at its most basic, the military must be ready to defend, with force of arms if necessary, the nation, its values, and its way of life.

The military must constantly resist the temptation to overemphasize the pre-eminence of war fighting. While war is acknowledged as the most elementary basis on which to affirm the core values of the military, it is the requirements of peacekeeping and peace enforcement — roles at the ‘lower end’ of the spectrum — that the military must learn to accommodate better within its self-image. These roles contribute to peace and stability and, in their application, call for an approach with more nuance and adaptability. This can be achieved only if the necessary tools are imparted in the education and development of personnel through their military training.

As our chapter on training makes clear, greater emphasis must be placed on the application of military skills in specifically considered and developed scenarios or situations (see Volume 2, Chapter 21). Far greater attention must be paid to the attitudes of troops to the complex tasks they are being asked to perform around the globe. It is in this respect that we have called for enhanced training in the laws of war and in international humanitarian law. It is also in this respect that we have recommended that the CF promote greater sensitivity to the cultural, ethnic and social differences that soldiers might be expected to face in each prospective mission. As Berel Rodal states in a study we commissioned,

...the involvement of armed forces in peace operations in support of human rights and law and in which the maintenance of legitimacy is important places a premium on the democratic character and commitment of forces, without diminishing the role of proper military virtues. Soldiers must themselves be conscious of these values, and experience them, if they are to be expected to protect them and foster them abroad.¹⁰

We regard the *Canadian Charter of Rights and Freedoms*, with its fundamental declaration of national values, as the firm base on which a soldier’s development should proceed. The values Canadians expect their soldiers to demonstrate in their actions and conduct abroad as makers and keepers of peace may be gleaned from the Charter. These values include fairness, decency, respect for human rights, compassion, and a strong sense of justice. We believe that the characteristics and values of the CF — founded on the traditional core values as reinforced through great sacrifice in waging war and securing peace — can and must be adapted to accommodate the evolving character of Canadian society.

Aggressivity and Discipline

To apply force effectively, soldiers must be well trained and fit, but first and foremost they must be highly disciplined. They must be confident of their abilities and aggressive in their application of force, when force is required and justified. Their lives, the lives of their comrades, and the success of their operations depend on it. Aggressivity is analyzed in Volume 2, Chapter 18 (Discipline), where we conclude that controlled aggressivity, applied by disciplined troops under good leadership, is a necessary feature of effective soldiering.

It is discipline that controls aggressivity and, indeed, the most important defining characteristic of the contemporary military can be said to be discipline.

Respect for the Law

Members of the CF are Canadian citizens and, save for what they voluntarily relinquish as a condition of entry into the service, they have the same rights and obligations as every other citizen. For military men and women, respect for the law, an obligation they share with all Canadians, also includes subjection to military law. Military law provides the foundations of the discipline necessary for operations.¹¹

The requirement to observe military law in addition to civilian law thus imposes obligations and demands on soldiers that go beyond those experienced by their civilian counterparts. Soldiers also have a special responsibility under the law that arises by virtue of the authority entrusted to them to use deadly force in the national interest.

Rights and Obligations

A soldier knowingly and willingly forgoes certain rights and obligations on joining the CF. These include certain limitations on freedom of speech in the area of public dissent, on freedom of association, and on the right to engage in certain political activities.¹² Such limitations are regarded as necessary in support of the group and in the interests of good order and discipline.

Military life stresses the obligation to subordinate individual interests, concerns, and fears to the needs of the group. Military history is replete with examples showing that the unit is capable of prevailing against great odds, provided all members act as a cohesive whole. Together, individuals in a unit can endure grave danger in demanding and difficult circumstances. Apart, they would be doomed to defeat.

Core Values

Nothing distinguishes the soldier from the civilian more strikingly than the acceptance that one of the basic rights that may have to be forgone in the national interest is the right to life. This requirement to give up one's life for one's country is spoken of in the military literature as the clause of "unlimited liability".¹³ This is the essential defining or differentiating characteristic separating soldiers from fellow citizens.

This remarkable quality depends for its existence on two conditions. The first is discipline, which begins with the example of self-discipline that leaders impart. Leaders must be the first, in terms of readiness, to sacrifice themselves for their troops. In response, soldiers undertake to do their duty willingly, offering their lives if need be. The second is respect for the military ethos, with its emphasis on the core values of integrity, courage, loyalty, selflessness, and self-discipline. Every military operation from Vimy to Dieppe, Ortona to Caen, Kapyong to the former Yugoslavia has reaffirmed the need for such an ethos.

Some contend that there is a danger that the ethos of the CF is weakening. Recent trends toward more civilian and business-oriented practices, although of assistance in the management of DND, are seen by some within the military as affecting the CF negatively. Their belief is that, as military members attempt to accommodate not only the practices but also the characteristics and values that underlie those practices, essential military values are being put at risk.

In light of the Somalia experience, it may not be enough simply to articulate an ethos and exhort soldiers to follow it. It would seem that a more fundamental need exists for a kind of confirmatory and probative exercise to demonstrate that all soldiers, but particularly the senior leadership, live by the military ethos and personify its core values.¹⁴ The military, led by its senior officers, needs to reclaim the ethical high ground.

We urge senior leaders of the CF to redefine the characteristics and values of the Canadian military and to establish the capability to monitor the CF on an ongoing basis. In that process it will be critical to confirm those core values without which the health of the military profession in Canada cannot be restored. In the process of this re-assessment, the CF leadership should be guided by the imperative that they must be prepared to conduct operations in peace and war in accordance with Canadian standards, values, laws, and ethics.

STANDARDS EXPECTED OF THE MILITARY

Soldiers wear the official uniform of Canada. They display the Canadian flag on those uniforms when on missions out-of-country. Society's expectations of the nation's flag bearers are indeed higher than for the average citizen. Those expectations include the notion that soldiers serve as a symbol of all that is best in the national character.

General Sir John Hackett has attested that the military profession plays a special role in the nation as "the repository of the nation's values".¹⁵ We believe that the military profession in Canada does indeed regard itself as occupying the role General Hackett describes.

CONCLUSION

Canadians likely have differing perceptions of their military and its values, but an increased public awareness of the special nature of the military culture and its values can overcome this obstacle. An enlightened public, we believe, will accept that its modern military, even when striving to be sensitive to changes in society, cannot shift away from its core values. A failure of military values lies at the heart of the Somalia experience. It is to be hoped that the public, the politicians and the media will support the military in its endeavour to occupy a special position in the public imagination as the repository of the nation's values.

NOTES

1. The CF, like many other parts of Canadian society, including business, politics and other professions, does not yet reflect all parts of the ethnic mosaic, at least in numerical terms. As amplified in Volume 2, Chapter 20, Personnel Selection and Screening, a CF employment equity project was introduced in 1992 in recognition of the need for the CF to reflect Canada's cultural diversity.
2. Indeed they resist attempts to change them. Examples include the Brockville Rifles, The Royal Canadian Regiment and London, Ontario, the Military Engineers and Chilliwack, British Columbia, and the Navy and Halifax, Nova Scotia.
3. J.S. Finan and S.B. Fleming, "Public Attitudes Towards Defence and Security in Canada", in *Canada's International Security Policy*, ed. D.B. Dewitt and D. Leyton-Brown (Scarborough: Prentice-Hall Canada Inc., 1994), p. 298.
4. Desmond Morton, *Canada and War, A Military and Political History* (Toronto: Butterworths, 1981), p. 1.

5. Finan and Fleming, "Public Attitudes Towards Defence and Security in Canada", pp. 304–308.
6. Maj C.A. Cotton, "Military Attitudes and Values of the Army in Canada", Research Report 79-5 (Willowdale, Ont.: Canadian Forces Personnel Applied Research Unit, 1979).
7. Gen (ret) Gerry Theriault, "Democratic Civil-Military Relations: A Canadian View", address to the Canadian Institute of Strategic Studies, in *The Canadian Strategic Forecast 1996: The Military in Democratic Society*, p. 12.
8. Special Commission on the Restructuring of the Reserves (Dickson report), October 30, 1995.
9. Others, such as the Canadian Institute of Strategic Studies, the new Defence Management Studies Program at Queen's University and Université Laval, and the chairs of strategic and defence studies at Canadian universities, all have the potential to raise public awareness of defence issues.
10. Berel Rodal, *Defending Democracy: The Military in a Free and Democratic Society at the Turn of the Century*, study prepared for the Commission of Inquiry into the Deployment of Canadian Forces to Somalia (Ottawa: Public Works and Government Services, 1997), p. 90.
11. On operations, soldiers are also subject to international law and the law of armed conflict.
12. We make recommendations to broaden the ability of soldiers to speak out on issues of concern and enhance their rights of free expression in Volume 2, Chapter 16.
13. General Sir John Hackett, *The Profession of Arms* (London: Times Publishing Company Ltd., 1962), p. 63.
14. It is instructive to note, in Gordon R. Sullivan and Michael V. Harper, *Hope Is Not a Method* (New York: Random House, 1996), pp. 9–10, that the U.S. Army is receiving similar advice:

As we talked about the vision [of the U.S. Army], we emphasized that hope is not a method: talking about what we stand for and what we could become would not be enough. The Army's transformation would have to be grounded in action — positive, aggressive action guided by the vision and consistent with our values, action that people could see and understand. Leaders would have to think and act purposefully, to make good things happen, and to keep bad things from happening. We would have to demonstrate the future so that people would understand it and stick with us as we helped them build it.
15. Hackett, *The Profession of Arms*, p. 58.



THE NEED FOR A VIGILANT PARLIAMENT

The proposals discussed in this chapter are not a panacea for all that ails the military. Rather, a few thoughts and some modest suggestions are put forward to stimulate debate on a serious subject.

Canada has begun a new relationship with its armed forces, one that arguably requires greater involvement by members of Parliament and Canadians generally in the direction, supervision, and control of the Canadian Forces (CF). Civil control of the military may be a defining characteristic of liberal democracies, but it does not occur invariably. Civil control of the military in Canada and abroad should come from attentive citizens acting through an informed, concerned, and vigilant Parliament.

There is a perceived need to strengthen the role of Parliament in the development and scrutiny of defence policy. Moreover, it is possible that this goal can be achieved by establishing an effective mechanism in Parliament to oversee the defence establishment and by making a few, but significant, amendments to the *National Defence Act*.

PARLIAMENT AND CIVIL CONTROL OF THE MILITARY

The quintessential condition for control of the military and all aspects of national defence is a vigilant Parliament. Between 1949 and 1989, the missions, tasks, organization, and functioning of the armed forces were fixed largely by the circumstances of the Cold War. Oversight of the armed services by Parliament during this period was largely *pro forma*. Since 1989, however, the CF has been called on increasingly to serve Canada in complex situations involving uncertain alliances, where the missions or the applicable doctrine are not always clear and resources, too often, are inadequate.

Given this reality, Parliament must exercise greater diligence in critically monitoring the terms agreed to or set by the government for the employment of the CF overseas and for safeguarding members of the armed forces from unreasonable risk. It must also monitor the operations of commanders and troops in the field. In 1994, a special joint committee of the Senate and the House of Commons reported that “whatever our individual views on particular issues of defence policy or operations, there was one matter on which we agreed almost from the beginning — that there is a need to strengthen the role of Parliament in the scrutiny and development of defence policy.”¹ Proponents of a greater role for Parliament also see a need to strengthen Parliament’s involvement in other important areas of national defence. Their argument proceeds on the basis that Canada requires a modern and more effective mechanism for greater control of national defence — one that is better suited to a sovereign liberal democracy and to the circumstances that the CF will most likely encounter at home and abroad.

Conducting inquiries of this nature arguably should be Parliament’s responsibility, although it does not do this as yet. To achieve more effective oversight, Parliament’s mechanisms for inquiry must be improved. A starting point might be to have the powers and responsibilities of the minister of National Defence, the chief of the defence staff (CDS), and, in particular, the deputy minister (DM) of the Department of National Defence clarified in law.

Should We Strengthen the Role of Parliament?

Directing the CDS and the DM is the duty and responsibility of the minister of National Defence acting for the government of the day.² Parliament has a role in enhancing public awareness of defence issues through debate and reasoned questioning of important decisions. If Parliament is to oversee the armed forces and the broader defence establishment effectively, then it should arguably have a greater ability to influence and monitor the actions and decisions of senior officers of the CF and senior officials in the Department of National Defence (DND). In the opinion of joint committee members, “defence policy cannot be made in private and the results simply announced” to Parliament and Canadians.³

Defence policy and the operations of the CF, especially in international security operations, are complex matters. Members of Parliament, in all parties, have often remarked that they have neither the information nor the resources and expertise to monitor and debate defence policy adequately, whether generally or with regard to specific operations. Parliament might be able to play a more significant part in scrutinizing policy and the actions and decisions of leaders in the CF and DND if an oversight body with the

proper resources devoted to this purpose was created to give members of Parliament a reasonable opportunity to understand the situations they are responsible for reviewing.

A body of this nature could be created as a special parliamentary committee. Whether such a committee should be housed in the Senate or the House of Commons or should be a joint committee with members from both chambers is a matter that need not be settled here, although the virtues of each model are easily stated.

Members of Parliament, although representative of the electorate, may not hold their seats long enough to become 'expert' in defence issues. Senators, on the other hand, while appointed, do have the opportunity to follow defence policy and the activities of the armed forces, often through many governments and in various contexts. Where members of the House of Commons and the Senate act together in special committees, they can bring a mix of fresh ideas and experience to the exercise, but the experience with joint committees has been uneven.

Whatever form it takes, a specialized committee could arguably assist in creating an informed parliamentary consensus on policies and proposals on important defence issues.⁴ Such a committee would be independent of the minister of National Defence and should be free to initiate studies, investigations, and inquiries on its own authority.

However, a committee without appropriate resources is unlikely to succeed. It requires at least a modest research capacity and, occasionally, outside experts. We do not wish to suggest that Parliament needs a 'counter-expert' body to challenge the authority and responsibilities of the minister, the CDS, and the DM. Rather, this committee of Parliament would require resources to research projects, issues, and problems of national defence to assist in developing its own assessment of national defence issues.

Consideration might also be given to entrusting such a committee with other important duties. For example, it could

- provide advice to the Governor in Council (in effect, the cabinet) when the appointment of a CDS is being considered;
- consider annually a report from the CDS on the operational effectiveness and readiness of the CF to meet the missions and tasks set for the CF by the government; and/or
- hold annual meetings at selected CF bases to listen to the views of members of the CF, their dependants, community leaders, and local authorities on issues of importance to the CF.

Of these suggested activities, overseeing the preparations and operations of the CF on international security operations would be, perhaps, the most important function.

In considering the role and responsibilities of such a committee, we should ask not only whether it would be preferable for Parliament to inquire into the future activities of the CF and DND but also whether it should do so proactively, *before* the CF is committed to a serious operation, rather than after. This is an important issue. Giving the committee the authority to act in advance of a deployment could be regarded as unrealistic or naïve given the current political reality concerning the role and activity of parliamentary committees.

Whether it is given the authority to conduct oversight in advance of, during or after operations, one would expect that when the government decides to make a commitment to a particular operation in which CF members would be deployed or at unusual risk, special hearings would be convened to examine the appropriateness of the commitment. At these hearings, the committee could be informed about the nature and quality of mission planning and evaluation, including whether the CF has had a reasonable time to prepare and train for the mission, and whether the CDS is prepared to declare the force operationally ready for employment, in all respects, in the mission. In pursuit of its objectives, the committee could also conceivably interview the commander of each CF contingent of an international security operation involved in the deployment.

During hearings of this kind, the committee would likely wish to consider the guidelines, criteria, or standards against which the mission has been assessed. In this regard, the 1987 white paper on defence described the government's policy for deciding when to deploy the CF in international missions. The white paper policy, which was reiterated in government statements in 1991 and 1992, proposed that:

Each request for a Canadian contribution to peacekeeping has to be considered on its own merits. The Government's decision will be based upon the following criteria: whether there is a clear and enforceable mandate; whether the principal antagonists agree to a cease-fire and to Canada's participation in the operation; whether the arrangements are, in fact, likely to serve the cause of peace and lead to a political settlement in the long term; whether the size and international composition of the force are appropriate to the mandate and will not damage Canada's relations with other states; whether Canadian participation will jeopardize other commitments; whether there is a single identifiable authority competent to support the operation and influence the disputants; and whether participation is adequately and equitably funded and logically supported. Moreover, each of our current commitments is routinely reviewed in light of these criteria.⁵

These are reasonable criteria to be considered in deciding whether the CF should be deployed in a particular international security operation.⁶

In discharging these duties, the proposed committee could also ask for and receive an assessment from the CDS of all significant proposed missions based on these criteria. The point is to ensure that the advice given in regard to any particular deployment be made according to previously known and agreed criteria.

Responsibility for accepting risks to the CF and the defence of Canada rests with the government, and it is the government that must be accountable for every decision to deploy the CF on international operations. But the government cannot make realistic assessments if it has no gauge against which to measure available information. A committee of Parliament could render a valuable service to the government, to Parliament and to Canadians by conducting formal reviews of operational and other assessments made by the CDS and/or the DM and of any questions or reviews presented to the committee by the minister.

As the spectre of war loomed over Canada in the late 1930s, Prime Minister Mackenzie King, responding to questions about Canada's future role in the event of war in Europe, declared, "The policy of the government...is that Parliament will decide what is to be done."⁷ The *National Defence Act*, which came into force in 1950, does not require that Parliament consent to sending the CF on a mission. Indeed, the act gives the Governor in Council power to place the CF on active service, that is, to give it a status usually conferred on troops involved in armed conflict.⁸ However, although not legally required, it has become parliamentary tradition (since 1950) for the government to reaffirm that the Canadian Forces is on active service for specific United Nations, North Atlantic Treaty Organization, and other operations involving substantial numbers of CF personnel and that are considered potentially hazardous.

This parliamentary tradition grew out of a decision by Prime Minister Louis St. Laurent on September 8, 1950. Parliament was debating the *National Defence Act* when hostilities broke out in Korea. Prime Minister St. Laurent declared that, henceforth, whenever significant numbers of members of the Canadian military were to be deployed outside Canada, the decision would be announced in the House of Commons and an enabling order in council would be tabled. However, under the *National Defence Act*, a governor-in-council (cabinet) decision is all that is lawfully required to place the CF on active service. Furthermore, the CF does not have to be placed on active service to participate in an operation. If the CF is placed on active service while Parliament is not sitting, Parliament must meet within 10 days to consider the governor-in-council decision.⁹ Under the arrangements suggested above, the proposed committee, if acting proactively, could also serve Parliament by reporting on its detailed review of defence decisions concerning such deployments.

Consideration might also be given to enacting legislation requiring that Parliament receive notice of deployments (which in any important context would be expected to provoke a debate in Parliament) when placing the CF on active service is proposed, or even whenever the government contemplates deploying any sizable unit or other element of the CF outside Canada. In such circumstances, the CDS could be required to make a report to Parliament on the effectiveness and readiness of the CF not simply to deploy overseas, but to undertake the proposed mission in all respects.

LEADERSHIP FOR NATIONAL DEFENCE

Although the *National Defence Act* (NDA) specifies authority, relationships, and organization of the DND and the CF, it is arcane in some respects and has been interpreted so freely in recent years that the duties and responsibilities of, and relationships between and among, the minister of National Defence, the CDS, and the DM have become unclear.

Members of Parliament and Canadians need an unequivocal and straightforward arrangement of these matters if they are to control and hold accountable the leaders of the armed forces and the wider defence establishment. This could conceivably be achieved with a few significant amendments to the NDA.

The structure of the NDA and custom confirm that the CF and the DND are two separate entities, notwithstanding their being housed and administered within an overarching organization. This division could be clarified and made more specific in the act and enhanced through separate provisions clarifying the minister's responsibilities and powers regarding the Department of National Defence and the Canadian Forces.¹⁰

Consideration could also be given to amending section 18 of the NDA to reflect the *de facto* status of the CDS as the commander of the CF. Such an amendment should seek to clarify the relationship of the CDS to the minister and confirm the position of the CDS as head of the service and senior military adviser to the government.

In making such an amendment, care should be taken not to impinge on the authority of Her Majesty and the Governor General as commander-in-chief of the CF. The legislation should therefore stipulate that final and ultimate authority over the military resides with Her Majesty and the Governor General as commander-in-chief of the CF. Thus framed, the amendment would respect the prerogatives of the Governor General and the relationship between the Governor General as commander-in-chief of the CF and the CDS as commander of the CF.

The Deputy Minister

The NDA states simply that “there shall be a Deputy Minister of National Defence” appointed by the Governor in Council. It does not state or define in any way the powers or authority of the office. Somewhat surprisingly, the act does not specify the relationship of the DM to the CDS or the CF. Hence, it is left to other statutes and custom to establish the powers and authority of the deputy minister of National Defence, in particular the *Financial Administration Act* and the *Interpretation Act*. Although the DM’s authority, if any, over the CDS and the CF is not clear in law, the Glassco Commission stated in 1963 that the DM’s authority “is exercised subject to the limitations set out in the NDA.”¹¹ Since the NDA states expressly that it is the CDS who has the “control and administration of the CF”, the deputy minister of DND should not act in military matters that are the province of the CDS under the NDA. However, the influence of the DM in all areas of defence policy, including “direction of the CF”, has increased significantly over the years, especially since 1972, when military and public service staffs were amalgamated at National Defence Headquarters.

Bureaucratic practices, on occasion, can be a cause for serious concern. Bureaucracies quite naturally can expand their duties and responsibilities in an attempt to fill legislative gaps or inadequacies. The notion of civil control of the military should not be confused with control exercised by public servants.¹² Indeed, this latter state of affairs undermines the traditional and necessary responsibilities of Parliament. Therefore, the NDA arguably should be amended to articulate the duties and responsibilities, as well as the limits of the powers and duties of the deputy minister of National Defence with regard to the CDS and the CF.

The NDA could expressly prohibit the deputy minister from assuming the powers or prerogatives of the minister as regards the authority to direct the CDS in any matter concerning the “command and administration of the CF”. To clarify the DM’s mandate further, the NDA could specify the DM’s authority in matters that do fall within a deputy minister’s responsibilities, such as financial administration and the management of public servants in DND, and acting as the senior departmental policy adviser to the minister, for example, as regards public service administration.

National Defence Headquarters

Clear, unambiguous lines of accountability and responsibility should be in the forefront of factors to be considered in any revision of the organization of national defence. The lack of clarity in matters of structure and organization at NDHQ is of concern to us. On occasion, we found it exceedingly

difficult to unravel or adequately separate the actions and decisions of senior officers of the Canadian Forces from those of senior public servants in the Department of National Defence, including the CDS and the DM. This confusion, in practical terms, extends beyond the Inquiry setting and affects the ability of the government of the day to secure effective accountability for official actions.¹³

A cogent argument in this regard could be framed in the following terms: if Parliament is to maintain civil control of the CF and the broader defence establishment, then members of Parliament require an organization for the direction of national defence that plainly and unequivocally defines authority for actions and decisions taken in the realms of the civilian ‘department’ and the military ‘Canadian Forces’. This kind of clarity to ensure accountability is not reflected in either the current definitions or the organization of NDHQ. Parliament, perhaps through a committee of the kind outlined here, should examine this matter urgently.

NOTES

1. Parliament of Canada, Senate and House of Commons, Special Joint Committee, *Security in a Changing World*, Report of the Special Joint Committee on Canada’s Defence Policy (October 25, 1994), p. 57.
2. National Defence Act (NDA), sections 4 and 18(1).
3. *Security in a Chainging World*, p. 58.
4. It has been recommended specifically that Parliament create a standing joint committee of the Senate and the House of Commons to assist the government and the minister of National Defence in overseeing the CF and DND: see *Security in a Changing World*, p. 57.
5. DND, *Challenge and Commitment, A Defence Policy for Canada* (Ottawa: Supply and Services, 1987), p. 24.
6. We would note, however, that in peace enforcement or peace making operations — as distinct from peacekeeping — the parties to an armed conflict may not have agreed to a cease-fire.
7. House of Commons, *Debates*, vol. III (1938), p. 3183.
8. NDA, section 31.
9. NDA, section 32, states in part: “Whenever the Governor in Council places the Canadian Forces or any component or unit thereof on active service, if Parliament is then separated by an adjournment or prorogation that will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days...”.
10. There are different ways to achieve this. The minister now “has the management and direction of the CF and of all matters relating to national defence” (NDA, section 4). The terms management and direction can be confused with the responsibilities of the CDS, who is “charged with the control and administration of the

CF" (NDA, section 18(1)). This confusion might be reduced and accountability clarified with a few amendments to Part I of the NDA. The minister's relationship to the CDS should also be clarified so he or she 'presides' over DND, and has 'direction over the CDS and all matters relating to national defence'. However, the day-to-day ordering and supervising of the CF, in all respects, is the responsibility of the CDS, not the job of a civilian authority.

11. Royal Commission on Government Organization, Vol. 4, Report 20, p. 74.
12. Testimony of Robert Fowler, Transcripts vol. 50, p. 10155; and J.L. Granatstein "A Paper Prepared for the Minister of National Defence", March 25, 1997, p. 7.
13. We note that others, including the Auditor General of Canada, have repeatedly brought this serious matter to the attention of governments. See, for example, *Report of The Auditor General of Canada*, March 31, 1984, p. 12-2, paragraph 12.9; and *Security in a Changing World*, pp. 57–62.

CONCLUSION

It is inappropriate, at this point, to speak in terms of a *conclusion* to the Somalia debacle. Our investigation has been curtailed, and important questions remain unanswered. Somalia will continue, unfortunately, to be a painful and sensitive topic for Canada's military for years to come. There can be no closure until the myriad problems besetting the Canadian Forces and the Department of National Defence are addressed comprehensively and effectively.

We began this report by expressing our sincere hope that the Somalia operation represented the nadir of the fortunes of Canada's contemporary military, since there seemed to us to be little room for further descent. Regardless of whether the Somalia mission represents, in historical terms, the lowest ebb, the mission certainly revealed much about the military's current low estate.

The stigma of failure must be attached to the Somalia deployment because the mission failed in so many important ways. While it makes for dispiriting reading, a review of our findings on fundamental matters shows the extent of the morass into which our military has fallen.

Leadership was central to our inquiry, because at issue was the extent to which the mission failed because of leadership shortcomings. Throughout this report, we have asked whether what ought to have been done was in fact done. Too often, our answer has been "no".

Accountability was ever before us, since the whole purpose of an investigatory inquiry is to provide a full accounting of what has transpired. What the government of the day and the Canadian people were seeking from our Inquiry were our findings on the accountability of senior Canadian Forces officers and Department of National Defence officials for the failures of the Somalia mission. We provided principles of accountability to be used as yardsticks for assessing the actions and decisions of senior leaders. Again, too often, we found that those actions and decisions were scandalously deficient.

Chain of command, if not effective, consigns the military enterprise to failure. In our Inquiry, where the task has been to examine and analyze the sufficiency of leaders' actions and decisions and the effectiveness of the operation as a whole, the importance of an effective chain of command is very clear. Regrettably, our conclusion has been that the chain of command, whether in theatre or in Ottawa at National Defence Headquarters, failed utterly at crucial points throughout the mission and its aftermath.

Discipline, whose chief purpose is to harness the capacity of the individual to the needs of the group, is imposed initially through the rigours of training. The ultimate goal of military discipline is to lead individual soldiers to the stage where they control their own conduct and actions. The probability of success for a particular mission varies in proportion to the extent to which there is good discipline among soldiers. In the lead-up to the deployment, as well as in Somalia itself, that state of discipline among the troops was alarmingly sub-standard — a condition that subsisted without correction.

Mission planning entails informed decision making and proper planning and preparation. Where inadequacies occur in these areas, the conditions for mission failure are created. Hastily taken decisions, based on inappropriate factors, substantial planning failures and inadequacies were manifest in such things as last-minute changes to the mission, its location, the tasks involved, the rules governing the use of force, and the organization, composition and structure of the force, as well as in shortfalls in intelligence support, logistical support, weapons and materiel, and force training.

Suitability focuses on the qualities of the unit selected for service in Somalia. With the selection of the Canadian Airborne Regiment to serve in Somalia came the need for us to evaluate the adequacy of that choice by senior leadership, given such realities as recognized deficiencies in the organization and leadership of the regiment; the restructuring and downsizing of the regiment; the failure to remedy known disciplinary problems; and the substantial turnover in personnel just before deployment. Our examination of this question led us to conclude that the CAR was clearly unsuitable, in the mission-specific sense, to serve in Somalia.

Training is the bedrock of discipline and the foundation for the professional image of the armed forces. Fundamental to the operational readiness of a unit is the question of whether troops are well trained to perform all aspects of the specific mission for which the unit is being deployed. In this report, we sought to answer the question of whether the soldiers deployed to Somalia were properly trained for their mission. This involved assessing the nature and adequacy of the training they received and the policies underlying that training, together with an examination of whether the performance of our soldiers could have been improved or enhanced if they had

been exposed to additional, more focused and sophisticated training. Our conclusion regarding mission-specific training is that on almost every count the Somalia mission must rate as a significant failure.

Rules of engagement refer to the operational directions that guide the application of armed force by soldiers in a theatre of operations and define the degree, manner, circumstances and limitations surrounding applications of force. Our task has been to evaluate the extent to which the rules of engagement were effectively interpreted, understood and applied at all levels of the Canadian Forces chain of command. We found that the ROE were poorly drafted; slow to be transmitted; never the subject of proper training; and inconsistently interpreted and applied. Moreover, we found serious deficiencies in Canadian policy and procedures for the development, formulation and transmission of rules of engagement.

Operational readiness entails a rigorous and comprehensive assessment of whether an assigned unit is ready to carry out its mission in an operational theatre. In some sense, the concept embraces all the matters described to this point. If a unit is led by competent and accountable leaders who respect and adhere to the imperatives of the chain of command system; if the soldiers serving under these leaders are properly recruited and screened, cohesive, well-trained and disciplined; if they have a clear understanding of adequately conceived and transmitted rules of engagement, then we can have confidence that this is a unit that is operationally ready for deployment. To our deep regret, we have come to negative conclusions about each of these elements and have found that the Canadian Airborne Regiment, in a fundamental sense, was not operationally ready for its mission.

Cover-up has been used in this report to describe a deliberate course of conduct that aims to frustrate broader moral, legal or public claims to information and involves a purposeful attempt at concealment. In the military, laws and regulations impose specific duties in relation to reporting, retaining or divulging information. In our Inquiry, the reporting of significant incidents in theatre and the adequacy of the investigations prompted by such reports revealed the existence of one kind of cover-up, while the alteration and falsification of documents and the manipulation of access to information processes led to another. A third variety also emerged, as many of the documents to which we were entitled and that were pledged publicly to us by leaders, both governmental and military, reached us with deliberate tardiness, or in incomplete form, or not at all. We found deep moral and legal failings in this area when we unearthed the origins of cover-up in both the incident of March 4, 1993 and in our examination of the public affairs branch of DND.

It gives us no satisfaction to use the vocabulary of shame in describing what has transpired. We believe that there is no honest yet less direct way to describe what we have found. Little honour is to be found in this failure.

We have entitled our report *Dishonoured Legacy* for, indeed, as regards Somalia, a once-proud legacy was dishonoured. Organizational problems and systemic deficiencies permeated all aspects of the mission. Those who oversaw and managed the organization and operated its systems must bear responsibility for its failures as well as its successes. The Canadian Forces and Department of National Defence leaders to whom this applies are those who occupied the upper tier of their organizations during the relevant periods.

Although we have identified some individual shortcomings in this report — primarily in relation to the pre-deployment phase of the mission* — the shortcomings we have recounted in the greatest detail are those that concern organizational or group responsibility for institutional or systemic shortcomings.

The cadre of senior leaders who were responsible for the Somalia mission and its aftermath are an elite group. Until now, theirs have been lives of achievement, commendation and reward. We are sensitive to the fact that implication in an inquiry such as ours, with its processes for the microscopic examination of past events and issues, can be a deeply distressing experience. Some who were members of this select group at the relevant time may even complain of having been tarred with the Somalia brush. We have little sympathy for such complaints. With leadership comes responsibility.

Many of the senior leaders about whom we have spoken in this report have retired or moved on to other things. In our view, this can only be to the good of the armed forces. It is time for a new leadership to emerge in the Department of National Defence and the Canadian Forces, and it is time for that new leadership to guide the forces in a new direction. Our dedicated and long-suffering soldiers deserve at least this much.

This marks the end of our report. In it, we have made hundreds of findings, both large and small, and offered 160 recommendations. What we offer here is not a blueprint for rectifying all that ails the military, but if the reforms we suggest are considered conscientiously and acted upon with dispatch, we believe that the healing process can begin.

* These are discussed in our volume on the failures of senior leaders.

Recommendations

We recommend that:

1. The Minister of National Defence report to Parliament by June 30, 1998 on all actions taken in response to the recommendations of this Commission of Inquiry.
2. The transcripts of our proceedings, as amplified and illuminated by the credibility findings in this report, be examined comprehensively by appropriate authorities in the Department of National Defence and the Canadian Forces, with a view to taking appropriate and necessary action with regard to witnesses who by their actions and attitude flouted or demeaned
 - (a) their oath or solemn affirmation;
 - (b) their military duty to assist the Inquiry in its search for the truth in the public interest;
 - (c) the trust and confidence of Canadians in them; or
 - (d) the officer's commission scroll, which expresses Her Majesty's special trust and confidence in a Canadian officer's loyalty, courage and integrity.
3. Save for those individuals who have been disciplined for actions in relation to the deployment, all members of the Canadian Forces who served in Somalia receive a special medal designed and designated for that purpose.



RECOMMENDATIONS

Chapter 15 – Leadership

We recommend that:

- 15.1 The Chief of the Defence Staff adopt formal criteria, along the lines of the core qualities of military leadership, other necessary attributes, and indicative performance factors set out in Chapter 15 of this Report, as the basis for describing the leadership necessary in the Canadian Forces, and for orienting the selection, training, development and assessment of leaders.
- 15.2 The core qualities and other necessary attributes set out in Chapter 15 of this Report be applied in the selection of officers for promotion to and within general officer ranks. These core qualities are integrity, courage, loyalty, selflessness and self-discipline. Other necessary attributes are dedication, knowledge, intellect, perseverance, decisiveness, judgement, and physical robustness.
- 15.3 The Chief of the Defence Staff adopt formal criteria for the accountability of leaders within the Canadian Forces derived from the principles of accountability set out in Chapter 16 of this Report, and organized under the headings of accountability, responsibility, supervision, delegation, sanction and knowledge.
- 15.4 The Canadian Forces make a concerted effort to improve the quality of leadership at all levels by ensuring adoption of and adherence to the principles embodied in the findings and recommendations of

this Commission of Inquiry regarding the selection, screening, promotion and supervision of personnel; the provision of appropriate basic and continuing training; the demonstration of self-discipline and enforcement of discipline for all ranks; the chain of command, operational readiness and mission planning; and the principles and methods of accountability expressed throughout this Report.

Chapter 16 – Accountability

We recommend that:

- 16.1 The *National Defence Act*, as a matter of high priority, be amended to establish an independent review body, the Office of the Inspector General, with well defined and independent jurisdiction and comprehensive powers, including the powers to:
 - (a) evaluate systemic problems in the military justice system;
 - (b) conduct investigations into officer misconduct, such as failure to investigate, failure to take corrective action, personal misconduct, waste and abuse, and possible injustice to individuals;
 - (c) protect those who report wrongdoing from reprisals; and
 - (d) protect individuals from abuse of authority and improper personnel actions, including racial harassment.
- 16.2 The Chief of the Defence Staff and the Deputy Minister of National Defence institute a comprehensive audit and review of:
 - (a) the duties, roles and responsibilities of all military officers and civilian officials to define better and more clearly their tasks, functions and responsibilities;
 - (b) the adequacy of existing procedures and practices of reporting, record keeping, and document retention and disposal, including the adequacy of penalties for failures to comply; and
 - (c) the duties and responsibilities of military officers and departmental officials at National Defence Headquarters in advising government about intended or contemplated military activities or operations.

- 16.3 The Chief of the Defence Staff incorporate the values, principles and processes of accountability into continuing education of officer cadets at the Royal Military College and in staff training, command and staff training, and senior command courses. In particular, such education and training should establish clearly the accountability requirements in the command process and the issuance of orders, and the importance of upper ranks setting a personal example with respect to morality and respect for the rule of law.
- 16.4 To strengthen the capacity of Parliament to supervise and oversee defence matters, the *National Defence Act* be amended to require a detailed annual report to Parliament regarding matters of major interest and concern to the operations of the National Defence portfolio and articulating performance evaluation standards. Areas to be addressed should include, but not be limited to:
- (a) a description of operational problems;
 - (b) detailed disciplinary accounts;
 - (c) administrative shortcomings;
 - (d) fiscal and resource concerns; and
 - (e) post-mission assessments.
- 16.5 The *National Defence Act* be amended to require a mandatory parliamentary review of the adequacy of the act every five years.
- 16.6 The *Queen's Regulations and Orders* be amended to provide for a special and more effective form of military career review procedure to deal with cases of intimidation and harassment related to the Somalia deployment and this Commission of Inquiry.
- 16.7 Such special career review boards be entirely independent and impartial committees and contain representation from outside the military, including judges or other respected members of the larger community, to ensure transparency and objectivity in this process.
- 16.8 Decisions of these special career review boards be subject to a further effective review by a special committee of the House of Commons or the Senate or a judge of the Federal Court.

- 16.9 In the event that a finding is made that reprisals have occurred and career advancement has been adversely affected, a mechanism for redress be available.
- 16.10 For the next five years, an annual report reviewing the career progression of all those who have testified before or otherwise assisted the Inquiry be prepared by the Chief of the Defence Staff for consideration by a special committee of the House of Commons or the Senate.
- 16.11 A specific process be established, under the purview of the proposed Inspector General, designed to protect soldiers who, in the future, bring reports of wrongdoing to the attention of their superiors.
- 16.12 *The Queen's Regulations and Orders Article 19 and other official guidelines and directives be amended to demonstrate openness and receptivity to legitimate criticism and differing points of view, so that members of the military enjoy a right of free expression to the fullest extent possible, consistent with the need to maintain good order, discipline, and national security.*

Chapter 17 – The Chain of Command

We recommend that:

- 17.1 The Chief of the Defence Staff:
 - (a) confirm in doctrine and in orders that the chain of command is the sole mechanism for transmitting orders and directions to the Canadian Forces;
 - (b) confirm in doctrine and in orders that staff officers are never part of the chain of command and have no authority to issue orders except in the name of their respective commanders; and
 - (c) in the case of a specific operation, improve existing mechanisms for reviewing, confirming and publishing the chain of command.
- 17.2 The Chief of the Defence Staff ensure that technical networks, such as legal, medical or engineering specialist networks, do not interfere with or confuse the chain of command between commanders.

- 17.3 The Chief of the Defence Staff establish general concepts and principles for the command of Canadian Forces contingents on international operations. These concepts and principles should then be instilled through training and used to frame particular orders for commanders of specific missions.
- 17.4 For greater clarity, and to remedy deficiencies in existing practices, the Chief of the Defence Staff ensure that all commanders of Canadian Forces contingents destined for international operations are given operations orders concerning the chain of command:
- (a) within the contingent;
 - (b) between the Canadian Forces contingent and allied commanders; and
 - (c) between the deployed contingent and the Chief of the Defence Staff or subordinate commanders.
- 17.5 The Chief of the Defence Staff conduct national training exercises routinely to test and evaluate the Canadian Forces chain of command in likely or planned operational settings.

Chapter 18 – Discipline

We recommend that:

- 18.1 The Chief of the Defence Staff institute an official policy on screening aspirants for all leadership positions, beginning with the selection of master corporals:
- (a) identifying self-discipline as a precondition of both commissioned and non-commissioned officership; and
 - (b) providing for the evaluation of the individual in terms of self-discipline, including the ability to control aggressive and impulsive behaviour.
- 18.2 The Chief of the Defence Staff ensure that the importance, function and application of discipline be taught in all officer leadership training, including Royal Military College, staff and command college courses, and senior command courses.

- 18.3 The Chief of the Defence Staff modify the performance evaluation process to ensure that each individual's standard of self-discipline is assessed in the annual performance evaluation report form, along with the individual's performance in applying discipline when exercising authority.
 - 18.4 The Chief of the Defence Staff establish the head of Canadian Forces personnel (currently the Assistant Deputy Minister Personnel) as the focal point for discipline at the senior staff level in National Defence Headquarters, with advice and support from the Director General of Military Legal Services and the Director of Military Police. To this end, the head of personnel should establish and review policy on discipline, monitor all Canadian Forces plans and programs to ensure that discipline is considered, and assess the impact of discipline on plans, programs, activities and operations, both as they are planned and regularly as they are implemented.
 - 18.5 The Chief of the Defence Staff emphasize the importance of discipline by reviewing frequent and regular reports of the Inspector General, and by requiring the head of personnel to report at least monthly at a Daily Executive Meeting on the state of discipline throughout the Canadian Forces, both inside and outside the chain of command, and by personally overseeing any necessary follow-up.
 - 18.6 The Chief of the Defence Staff establish in doctrine and practice that discipline be identified as a determining factor in assessing the operational readiness of any unit or formation.
 - 18.7 The Chief of the Defence Staff establish in doctrine and practice that during operations, all officers and non-commissioned officers must monitor discipline closely; and that the head of personnel oversee and, at the end of each mission, report on discipline.
 - 18.8 To remedy deficiencies in existing practices, the Chief of the Defence Staff undertake regularly a formal evaluation of the policies, procedures and practices that guide and influence the administration of discipline in the Canadian Forces.
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Chapter 20 – Personnel Selection and Screening

We recommend that:

- 20.1 The Chief of the Defence Staff enforce adherence to the following principles in the Canadian Forces promotion and appointment system:
 - (a) that merit be a predominant factor in all promotion decisions; and
 - (b) that the operational needs of the Service always have priority over individual career considerations and administrative convenience.
- 20.2 To remedy deficiencies in existing practices, and to avoid minimization or concealment of personnel problems, the Chief of the Defence Staff modify the Performance Evaluation Report system to ensure that a frank assessment is rendered of Canadian Forces members and that poor conduct or performance is noted for future reference by superiors (whether or not the matter triggers formal disciplinary or administrative action).
- 20.3 The proposed Inspector General conduct periodic reviews of appointments to key leadership positions in the Canadian Forces to ensure that the proper criteria are being applied and that such appointments are as competitive as possible.
- 20.4 The Chief of the Defence Staff ensure that good discipline is made an explicit criterion in all promotion and appointment decisions.
- 20.5 The Chief of the Defence Staff develop formal criteria for appointment to key command positions, including unit and sub-unit commands, deviation from which would require the formal approval of the Chief of the Defence Staff.
- 20.6 The Chief of the Defence Staff ensure that, for any future composite combat arms unit (such as the Canadian Airborne Regiment):
 - (a) formalized criteria for selection to the unit are established;
 - (b) the Commanding Officer have maximum freedom in selecting personnel for that unit; and

- (c) the Commanding Officer have maximum freedom to employ personnel as the Commanding Officer deems appropriate.
- 20.7 Canadian Forces Administrative Orders 20-50 and 20-46, which deal with the screening of Canadian Forces personnel for overseas deployments, be amended to:
- (a) place priority on discipline as a criterion for selecting personnel for overseas deployment;
 - (b) make consideration of the behavioural suitability indicators mandatory; and
 - (c) make it clear that although the behavioural suitability indicators listed in Canadian Forces Administrative Order 20-50, as well as the option of referring cases for assessment by behavioural specialists, can assist commanding officers in screening personnel for deployment, they in no way displace or qualify commanding officers' responsibility or accountability for screening personnel under their command.
- 20.8 The Chief of the Defence Staff develop and issue clear and comprehensive guidelines to commanders at all levels regarding prohibited racist and extremist conduct. The guidelines should define and list examples of racist behaviour and symbolism and should include a list and description of extremist groups to which Canadian Forces members may not belong or lend their support.
- 20.9 The Canadian Forces continue to monitor racist group involvement and affiliation among Canadian Forces members.
- 20.10 The Department of National Defence and the Canadian Forces clarify their position on the extent of their obligations under applicable privacy and human rights laws in screening applicants and members of the Canadian Forces for behavioural suitability, including racist group affiliation.
- 20.11 The Department of National Defence and the Government of Canada review their security policies and practices to ensure that, within the limits of applicable privacy and human rights legislation, relevant information concerning involvement by Canadian Forces members

or applicants with racist organizations and hate groups is shared efficiently and effectively among all responsible agencies, including the chain of command.

- 20.12** The Department of National Defence and the Canadian Forces establish regular liaison with anti-racist groups to obtain assistance in the conduct of appropriate cultural sensitivity training and to assist supervisors and commanders in identifying signs of racism and involvement with hate groups.

Chapter 21 – Training

We recommend that:

- 21.1** The Canadian Forces training philosophy be recast to recognize that a core of non-traditional military training designed specifically for peace support operations (and referred to as generic peacekeeping training) must be provided along with general purpose combat training to prepare Canadian Forces personnel adequately for all operational missions and tasks.
- 21.2** Generic peacekeeping training become an integral part of all Canadian Forces training at both the individual (basic, occupational and leadership) and collective levels, with appropriate allocations of resources in terms of funding, people and time.
- 21.3** The Chief of the Defence Staff order a study to determine how best to integrate the full range of knowledge, skills, attitudes and values required for peace support operations at all stages of individual and collective training for both officers and non-commissioned members.
- 21.4** The Canadian Forces recognize, in doctrine and practice, that peace support operations require mental preparation and conditioning that differ from what is required for conventional warfare, and that the training of Canadian Forces members must provide for the early and continuous development of the values, attitudes and orientation necessary to perform all operational missions, including peace support operations.

- 21.5 The Chief of the Defence Staff ensure that the development of comprehensive training policies and programs for peace support operations makes greater use of a broad range of sources, including peacekeeping training guidelines and policies developed by the UN and member states, and the training provided by police forces and international aid organizations.
- 21.6 The Chief of the Defence Staff order that the mandates of all Canadian Forces institutions and programs involved in education and training be reviewed with a view to enhancing and formalizing peace support operations training objectives.
- 21.7 Recognizing steps already taken to establish the Peace Support Training Centre and Lessons Learned Centres, the Chief of the Defence Staff make provision for the co-ordination of and allocation of adequate resources to the following functions:
- (a) continuing development of doctrine respecting the planning, organization, conduct and evaluation of peace support operations training;
 - (b) development of comprehensive and detailed training standards and standardized training packages for all components of peace support operations training;
 - (c) timely distribution of current doctrine and training materials to all personnel tasked with planning and implementing peace support operations training, and to all units warned for peace support operations duty;
 - (d) timely development and distribution of mission-specific information and materials for use in pre-deployment training;
 - (e) systematic compilation and analysis of lessons learned, and updating of doctrine and training materials in that light;
 - (f) systematic monitoring and evaluation of training to ensure that it is conducted in accordance with established doctrine and standards; and
 - (g) provision of specialist assistance as required by units in their pre-deployment preparations.

- 21.8 The Chief of the Defence Staff oversee the development of specialist expertise within the Canadian Forces in training in the Law of Armed Conflict and the Rules of Engagement, and in intercultural and intergroup relations, negotiation and conflict resolution; and ensure continuing training in these skills for all members of the Canadian Forces.
- 21.9 The Chief of the Defence Staff ensure that the time and resources necessary for training a unit to a state of operational readiness be assessed before committing that unit's participation in a peace support operation.
- 21.10 The Chief of the Defence Staff integrate a minimum standard period of time for pre-deployment training into the planning process. In exceptional cases, where it may be necessary to deploy with a training period shorter than the standard minimum, the senior officers responsible should prepare a risk analysis for approval by the Chief of the Defence Staff. In addition, a plan should be developed to compensate for the foreshortened training period, such as making provision for the enhanced supervision of pre-deployment training activities, a lengthened acclimatization period, and supplementary in-theatre training.
- 21.11 The Chief of the Defence Staff confirm in doctrine and policy the recognition of sufficient and appropriate training as a key aspect of operational readiness.
- 21.12 Contrary to experience with the Somalia deployment, where general purpose combat training was emphasized, the Chief of the Defence Staff confirm in doctrine and policy that the pre-deployment period, from warning order to deployment, should be devoted primarily to mission-specific training.
- 21.13 The Chief of the Defence Staff establish in doctrine and policy that to facilitate pre-deployment training focused on mission-specific requirements, units preparing for peace support operations be provided, on a timely basis, with:
- (a) a clearly defined mission and statement of tasks;

- (b) up-to-date and accurate intelligence as a basis for forecasting the conditions likely to be encountered in theatre;
- (c) mission-specific Rules of Engagement and Standing Operating Procedures; and
- (d) a sufficient quantity of vehicles and equipment, in operational condition, to meet training needs.

21.14 The Chief of the Defence Staff establish mechanisms to ensure that all members of units preparing for deployment on peace support operations receive sufficient and appropriate training on the local culture, history, and politics of the theatre of operations, together with refresher training on negotiation and conflict resolution and the Law of Armed Conflict, as well as basic language training if necessary.

21.15 The Chief of the Defence Staff establish in doctrine and policy that no unit be declared operationally ready unless all its members have received sufficient and appropriate training on mission-specific Rules of Engagement and steps have been taken to establish that the Rules of Engagement are fully understood.

21.16 The Chief of the Defence Staff ensure that training standards and programs provide that training in the Law of Armed Conflict, Rules of Engagement, cross-cultural relations, and negotiation and conflict resolution be scenario-based and integrated into training exercises, in addition to classroom instruction or briefings, to permit the practice of skills and to provide a mechanism for confirming that instructions have been fully understood.

21.17 The Chief of the Defence Staff establish in doctrine and policy that an in-theatre training plan be developed for any unit deploying on a peace support operation. The plan should provide for ongoing refresher training and remedial training in areas where deficiencies were noted before deployment and be modified as required to meet changing or unexpected conditions in theatre.

21.18 Canadian Forces doctrine recognize the personal supervision of training by all commanders, including the most senior, as an irreducible responsibility and an essential expression of good leadership. Canadian Forces doctrine should also recognize that

training provides the best opportunity, short of operations, for commanders to assess the attitude of troops and gauge the readiness of a unit and affords a unique occasion for commanders to impress upon their troops, through their presence, the standards expected of them, as well as their own commitment to the mission on which the troops are about to be sent.

Chapter 22 – Rules of Engagement

We recommend that:

- 22.1 The Chief of the Defence Staff create a general framework for the development of Rules of Engagement to establish the policies and protocols governing the production of such rules.
- 22.2 The Chief of the Defence Staff develop and promulgate generic Rules of Engagement based on international and domestic law, including the Law of Armed Conflict, domestic foreign policy, and operational considerations.
- 22.3 The Chief of the Defence Staff establish and implement policies for the timely development of mission-specific Rules of Engagement and ensure that a verification and testing process for the Rules of Engagement is incorporated in the process for declaring a unit operationally ready for deployment.
- 22.4 The Chief of the Defence Staff ensure that the Canadian Forces maintain a data bank of Rules of Engagement from other countries, as well as Rules of Engagement and after-action reports from previous Canadian missions, as a basis for devising and evaluating future Rules of Engagement.
- 22.5 The Chief of the Defence Staff develop standards for scenario-based, context-informed training on Rules of Engagement, both before a mission and in theatre, with provision for additional training whenever there is confusion or misunderstanding.

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- 22.6 The Chief of the Defence Staff develop and put in place a system for monitoring the transmission, interpretation and application of the Rules of Engagement, to ensure that all ranks understand them, and develop an adjustment mechanism to permit quick changes that are monitored to comply with the intent of the Chief of the Defence Staff.
 - 22.7 The Chief of the Defence Staff ensure that any change in the Rules of Engagement, once disseminated, result in further training.
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Chapter 23 – Operational Readiness

We recommend that:

- 23.1 The Chief of the Defence Staff ensure that standards for evaluating individuals, units and elements of the Canadian Forces for operational tasks call for the assessment of two necessary elements, operational effectiveness and operational preparedness, and that both criteria be satisfied before a unit is declared operationally ready for any mission.
- 23.2 To avoid confusion between readiness for employment and readiness for deployment on a particular mission, the Chief of the Defence Staff adopt and ensure adherence to the following definitions throughout the Canadian Forces: Operational effectiveness is a measure of the capability of a force to carry out its assigned mission. Operational preparedness is a measure of the degree to which a unit is ready to begin that mission. Operational readiness of any unit or element, therefore, should be defined as the sum of its operational effectiveness and preparedness.
- 23.3 Contrary to the experience of the Somalia mission, the Chief of the Defence Staff ensure, before any Canadian Forces unit or element of any significant size is deployed on active service or international operations, that a formal declaration is made to the government regarding the readiness of that unit to undertake the mission effectively.

- 23.4 The Chief of the Defence Staff establish a staff, under CDS authority, to conduct no-notice tests and evaluations of the operational effectiveness and preparedness of selected commands, units and sub-units of the Canadian Forces.
- 23.5 The Chief of the Defence Staff order that national and command operational orders issued to Canadian Forces units tasked for active service or international operations state precisely the standards and degrees of operational effectiveness and operational preparedness demanded of individuals, sub-units, units, and commanders.
- 23.6 The Chief of the Defence Staff standardize format, information, and directions concerning declarations of operational readiness and require such declarations to be signed by commanders.
- 23.7 The Chief of the Defence Staff establish clear, workable and standard measurements of operational effectiveness and preparedness for individuals, sub-units, units, and commanders in units and formations of the Canadian Forces.
- 23.8 The Chief of the Defence Staff replace the Operational Readiness Evaluation System with a more reliable and efficient process aimed at collecting information about the effectiveness and preparedness of major units of the Canadian Forces for assigned operational missions.
- 23.9 The new readiness reporting system be capable of giving the Chief of the Defence Staff, senior commanders and staff officers a real-time picture of the effectiveness and preparedness of major operational units of the Canadian Forces for their assigned tasks.
- 23.10 The new operational readiness reporting system identify operational units as being in certain degrees of effectiveness and preparedness, such as high, medium and low, and in certain states of readiness, such as standby-ready and deployment-ready.

Chapter 24 – Canada's Mission in Somalia

We recommend that:

- 24.1 The Government of Canada issue new guidelines and compulsory criteria for decisions about whether to participate in a peace support operation.
- 24.2 The Government of Canada define clearly the respective roles and responsibilities of the Department of Foreign Affairs and International Trade and the Department of National Defence in the decision-making process for peace support operations.
- 24.3 In briefings or advice to the Government relating to participation in a peace support operation, the Government of Canada require a comprehensive statement of how the peace support operations guidelines and criteria apply to the proposed operation.
- 24.4 The Chief of the Defence Staff develop Canadian Forces doctrine to guide the planning, participation and conduct of peace support operations.
- 24.5 The Government of Canada establish a new and permanent advisory body or secretariat to co-ordinate peace support operations policy and decision making.
- 24.6 The Government of Canada adopt the policy that Canadian participation in United Nations peace support operations is contingent upon:
 - (a) completion of a detailed mission analysis by the Chief of the Defence Staff each time Canada is asked to participate in a peace support operation; and
 - (b) inclusion in the mission analysis of the following elements: a determination of troop strengths, unit configuration, resource requirements, and weapons and other capabilities.

- 24.7 The Government of Canada, as part of its foreign and defence policy, advocate reform within the United Nations, particularly in the following areas:
- (a) development of a process to ensure that the mandates of United Nations operations, as adopted by the United Nations Security Council, are clear, enforceable and capable of achieving the goals of the mission; and
 - (b) development of a process to enhance the current planning structure at the United Nations to improve co-ordination of peace support operations through proper development of concepts of operations and strategic planning.

Chapter 25 – The Military Planning System

We recommend that:

- 25.1 To redress the planning problems earmarked by the Somalia mission, the Chief of the Defence Staff reinforce the importance of battle procedure (the process commanders use to select, warn, organize, and deploy troops for missions) as the proper foundation for operational planning at all levels of the Canadian Forces, and that the importance of systematic planning based on battle procedure be emphasized in staff training courses.
- 25.2 Contrary to recent experience, the Chief of the Defence Staff enunciate the principles that apply to planning, commanding and conducting operations by the Canadian Forces in each international operation where these differ from national principles of planning, commanding and conducting operations.
- 25.3 The Chief of the Defence Staff ensure that all states of command, such as national command, full command and operational command, are defined on the basis of Canadian military standards and criteria.

- 25.4 For each international operation, the Chief of the Defence Staff issue clear and concrete orders and terms of reference to guide commanders of Canadian Forces units and elements deployed on those operations. These should address, among other things, the mission statement, terms of employment, command relationships, and support relationships.
- 25.5 The Chief of the Defence Staff clarify the duties and responsibilities of the Deputy Chief of the Defence Staff and, in particular, identify precisely when the Deputy Chief of the Defence Staff is or is not in the chain of command.
- 25.6 In light of the Somalia experience, the Chief of the Defence Staff assert the authority of the Chief of the Defence Staff under the *National Defence Act*, to establish better “control and administration” of the Canadian Forces, taking appropriate steps to ensure that the Chief of the Defence Staff has adequate staff assistance to carry out this duty.
- 25.7 The Chief of the Defence Staff provide commanders deployed on operations with precise orders and unambiguous reporting requirements and lines to ensure that Canadian laws and norms are respected.
- 25.8 The Chief of the Defence Staff ensure that all plans for the employment of the Canadian Forces be subject to operational evaluations at all levels before operational deployment.
- 25.9 The Chief of the Defence Staff establish standing operating procedures for
 - (a) planning, testing and deploying Canadian Forces in domestic or international operations; and
 - (b) the conduct of operations by the Canadian Forces in domestic or international operations.
- 25.10 The Chief of the Defence Staff establish principles, criteria and policies governing the selection, employment and terms of reference for commanders appointed to command Canadian Forces units or elements in domestic or international operations.

- 25.11 The Chief of the Defence Staff conduct training and evaluation exercises to prepare and test staff procedures, doctrine, planning and staff officers in National Defence Headquarters and in the chain of command.
- 25.12 The Chief of the Defence Staff establish a uniform system for recording decisions taken by senior officers during all stages of planning for operations. The records maintained under this system should include a summary of the actions and decisions of officers and identify them by rank and position. The records should include important documents related to the history of the operation, including such things as estimates, reconnaissance reports, central discussions, orders, and casualty and incident reports.
- 25.13 The Chief of the Defence Staff or the Chief of the Defence Staff's designated commander identify and clarify the mission goals and objectives before commencing calculation of the force estimate.
- 25.14 The Chief of the Defence Staff base the force estimate for a given mission on the capacity of the Canadian Forces to fulfil the demands of the operation, as determined after a mission analysis has been completed and before recommending that Canadian Forces be committed for deployment.
- 25.15 The Chief of the Defence Staff develop a formal process to review force requirements once any Canadian Forces unit or element arrives in an operational theatre.
- 25.16 To remedy deficiencies in existing practices, before committing forces to an international operation, commanders should:
- (a) clearly establish the military mission as well as the tasks necessary to achieve the mission;
 - (b) return to the practice of preparing military estimates before developing the organization and composition of forces to be employed in operational theatres;
 - (c) be required to undertake a thorough reconnaissance of the specific area where the forces are to deploy; and

- (d) accept that in the interests of deploying a force that is appropriate, well balanced and durable, proper estimates of the requirements be completed before forces are committed and personnel ceilings are imposed.

25.17 The Chief of the Defence Staff develop specific doctrine outlining the intelligence-gathering process for all peace support operations, to be separate and distinct from the doctrine covering intelligence gathering for combat. This doctrine should include:

- (a) a statement confirming the purpose and principles of intelligence gathering for all peace support operations, from traditional peacekeeping to peace enforcement. Where required, a differentiation would be made between the strategic stage, the decision-making stage, and the operational planning stage of the operation;
- (b) a statement confirming the sources of information appropriate for use in the intelligence-gathering process;
- (c) a section outlining anticipated use of intelligence in peace support operations, during both the decision-making stage and the operational planning stage;
- (d) a section outlining the intelligence planning process during the various stages of planning, establishing what needs to be done and by whom, including any procedures required to develop an intelligence plan for the mission or intelligence support for the training of troops; and
- (e) a section describing the dissemination process for all stages, including the manner of dissemination and the personnel involved.

25.18 The Government of Canada urge the United Nations to expand its peacekeeping planning division to include an intelligence organization within the secretariat that would serve to co-ordinate the intelligence required for peace support operations, including maintenance of an information base on unstable regions available for use by troop-contributing countries.

- 25.19 The Chief of the Defence Staff ensure that planning doctrine includes appropriate assessment methodology to determine sufficient numbers of intelligence personnel and intelligence support personnel (interpreters) for the operation. In accordance with existing doctrine, the presence of intelligence personnel in the advance party should be ensured.
- 25.20 The Chief of the Defence Staff develop guidelines and procedures for ensuring that cultural training programs are appropriately supported by the intelligence staff by providing adequate and appropriate resources for the intelligence staff well in advance of the operation.
- 25.21 The Chief of the Defence Staff ensure that sufficient resources are available and adequate guidelines are in place for intelligence staff to foster self-sufficiency in the area of intelligence planning and to discourage over-reliance on other intelligence sources.
- 25.22 The Chief of the Defence Staff review the organization and process for intelligence planning to ensure maximum communication and efficiency in the intelligence-gathering and dissemination processes.
- 25.23 To remedy deficiencies in existing practices, the Chief of the Defence Staff ensure that logistical planning is finalized only after the mission concept is developed, the size and composition of the Canadian contingent is estimated, and a full reconnaissance of the area of operations has been undertaken.
- 25.24 The Chief of the Defence Staff provide guidelines stipulating that sufficient time be taken to assess any changes in areas of operation. Such guidelines should include the stipulation that military considerations are paramount in decisions to change the proposed mission site after materiel has been packed and logistics planning completed for the original site.

- 25.25 When a change in mission is contemplated, the Chief of the Defence Staff ensure that new logistical contingency plans are completed before the new mission is undertaken.
- 25.26 The Chief of the Defence Staff ensure that a National Support Element (that is, an integrated logistics support unit) is included as a separate unit at the commencement of every mission undertaken by the Canadian Forces.

Chapter 39 – Openness and Disclosure

We recommend that:

- 39.1 The Department of National Defence ensure that the National Defence Operations Centre logs are properly maintained, by implementing the following:
- (a) an audit procedure to ensure that standing operating procedures provide clear and sufficient guidelines on the type of information to be entered and how the information is to be entered;
 - (b) an adequate data base system, which includes software controls to ensure accurate data entry in each field and appropriate training for operators and users of this system; and
 - (c) increased system security to an acceptable standard compatible with the objective of national security, including restricting access to authorized persons using only their own accounts and passwords and extending the use of secure (hidden) fields to identify persons entering or deleting data.
- 39.2 The Department of National Defence and the Canadian Forces take steps to ensure that an adequate record of in-theatre operations is created and preserved thereafter by:
- (a) establishing better systems and procedures to ensure a more complete and permanent record of events, including the recording of each day's activity or inactivity, so that every date is accounted for, to avoid the appearance of non-reporting or deleted records;

- (b) training soldiers to appreciate the importance of the log and diary and their responsibility to follow proper procedures in creating, maintaining, and protecting the record;
 - (c) providing better procedures for supervising the maintenance of records in theatre to ensure adherence to established procedures;
 - (d) improving the integration of secure data collection and storage systems to ensure the integrity of records created; and
 - (e) ensuring that data banks are sufficient and include accurate information concerning individual taskings; the start and finish dates of each log and diary; and the location of records.
- 39.3 The Department of National Defence take the following steps to promote openness and transparency:
- (a) require the Deputy Minister of National Defence and the Chief of the Defence Staff to
 - (i) instil by example and through directives the importance of openness in responding to requests made under the *Access to Information Act*;
 - (ii) ensure that military and civilian personnel in the Department of National Defence are better trained to respond to *Access to Information Act* requests, particularly with regard to legal obligations and procedures; and
 - (iii) ensure that staff fully understand the requirement to report, as a significant incident under existing regulations, any suspected document alteration or improper response to *Access to Information Act* requests;
 - (b) begin consultations with the Information Commissioner, within three months of the submission of this report to the Governor in Council, to determine the most effective way of improving departmental responses to *Access to Information Act* requests; and
 - (c) ensure that public affairs policy and practices reflect the principles of openness, responsiveness, transparency and accountability expressed throughout this report.

Chapter 40 – Military Justice

We recommend that:

- 40.1 The *National Defence Act* be amended to provide for a restructured military justice system, establishing three classes of misconduct:
 - (a) Minor disciplinary: Any misconduct considered minor enough not to warrant detention, dismissal or imprisonment should be considered minor disciplinary misconduct. Examples might include a failure to salute and quarrelling with another Canadian Forces member. Minor disciplinary misconduct would not include service offences now listed in the *Queen's Regulations and Orders* (QR&O) 108.31(2);
 - (b) Major disciplinary: Any misconduct considered serious enough to warrant detention, dismissal or imprisonment should be considered major disciplinary misconduct triable only by a court martial. This would include infractions such as some of those listed in QR&O 108.31(2). Examples might include being drunk while on sentry duty during a time of war, insubordination and showing cowardice before the enemy. Major disciplinary misconduct would not include crimes under the *Criminal Code* or other federal statutes; and
 - (c) Criminal misconduct: Any misconduct that would constitute a crime and is to be the subject of a charge under the *Criminal Code* or other federal statute or foreign law, and triable only by court martial or a civil court.
- 40.2 To prevent abuse of the commanding officer's discretion to determine into which class the misconduct falls, there be formalized safeguards provided for in the *National Defence Act* and regulations, including the possibility of independent military investigations into the misconduct, the authority of an independent military prosecutor to lay a charge for criminal misconduct arising out of the same incident, and the oversight performed by an independent Inspector General.
- 40.3 The *National Defence Act* be amended to provide clearly that any individual in the Canadian Forces or any civilian can lay a complaint with Military Police without fear of reprisal and without having first to raise the complaint with the chain of command.

- 40.4 The Queen's Regulations and Orders be amended to circumscribe the discretion of a commanding officer with respect to the manner of conducting summary investigations to ensure that these investigations are conducted according to the guidelines in Canadian Forces Administrative Order 21-9, dealing with general instructions for boards of inquiry and summary investigations.
- 40.5 The guidelines in Canadian Forces Administrative Order 21-9 be amended to provide that
- (a) summary investigations be restricted to investigation of minor disciplinary misconduct or administrative matters;
 - (b) those conducting summary investigations have some minimum training standard in investigations, rules of evidence, and the recognition of potential criminality;
 - (c) those conducting summary investigations have a specific duty to report matters of potential criminality directly to Military Police; and
 - (d) those conducting summary investigations be free from any conflict of interest.
- 40.6 Military Police be independent of the chain of command when investigating major disciplinary and criminal misconduct.
- 40.7 Military Police be trained more thoroughly in police investigative techniques.
- 40.8 All Military Police, regardless of their specific assignment, be authorized to investigate suspected misconduct of their own accord unless another Military Police investigation is under way.
- 40.9 Control of the conduct of Military Police investigations of major disciplinary and criminal misconduct be removed from the possible influence of the commanding officer or the commanding officer's superiors. Military Police attached to units or elements of the Canadian Forces should refer major disciplinary and criminal misconduct to the Director of Military Police through dedicated Military Police channels.

- 40.10 The Director of Military Police oversee all Military Police investigations of major disciplinary and criminal misconduct and report on these matters to the Solicitor General of Canada.
- 40.11 The Director of Military Police be responsible and accountable to the Chief of the Defence Staff for all Military Police purposes, except for the investigation of major disciplinary or criminal misconduct.
- 40.12 Commanding officers have the power to request Military Police to investigate any misconduct, but commanding officers have no power to control the method of the investigation or limit the resources available to Military Police conducting investigations.
- 40.13 The Director of Military Police and all Military Police under the command of the Director have a system of ranking different from the general Canadian Forces system, so that Military Police are not seen or treated as subordinate to those they are investigating.
- 40.14 Professional police standards and codes of conduct be developed for Military Police.
- 40.15 To give effect to these new policing arrangements, Military Police be given adequate resources and training to allow them to perform their tasks.
- 40.16 Adequate numbers of appropriately trained Military Police accompany Canadian Forces deployments.
- 40.17 In general, the results of investigations into all types of misconduct — minor disciplinary, major disciplinary or criminal — be reported to the commanding officer of the unit or element to which the Canadian Forces member concerned belongs.
- 40.18 Results of investigations of major disciplinary and criminal misconduct be reported to an independent prosecuting authority under the direction of the Director General of Military Legal Services.

- 40.19 Control of the decision to charge for major disciplinary or criminal misconduct be removed from the commanding officer and vested in an independent prosecuting authority.
- 40.20 The commanding officer have the right to lay charges for minor disciplinary misconduct.
- 40.21 An independent prosecuting authority decide whether to lay charges for major disciplinary and criminal misconduct and have the responsibility for laying charges.
- 40.22 The prosecuting authority be independent in determining whether to charge and prosecute. However, guidelines should be developed to assist in the exercise of prosecutorial discretion.
- 40.23 Military Police serve as advisers to the independent prosecuting authority, but have no authority themselves to lay charges.
- 40.24 Commanding officers have no authority to dismiss charges laid by the independent military prosecutor.
- 40.25 The independent military prosecutor have authority to lay charges for minor disciplinary offences when the prosecutor deems it useful to prosecute multiple acts of misconduct, including minor disciplinary misconduct, at the same trial.
- 40.26 An accused person have a right to counsel when prosecuted for major disciplinary or criminal misconduct.
- 40.27 The standard of proof at a trial for major disciplinary or criminal misconduct be proof beyond a reasonable doubt.
- 40.28 There be no right to counsel in respect of minor disciplinary misconduct, since detention, dismissal or imprisonment would not be a possibility, but the right to counsel may be permitted at the discretion of the commanding officer.

- 40.29 The standard of proof at a trial of minor disciplinary misconduct be proof on a balance of probabilities. An accused person may be compelled to testify at a trial of minor disciplinary misconduct.
- 40.30 Accused persons charged with misconduct carrying a possible penalty of five years' imprisonment or more should have the right to elect trial by jury before a civilian court.
- 40.31 Punishments such as fine options, community service and conditional sentences, which have been made available in the civilian criminal process, be available within the military for minor and major disciplinary and criminal misconduct.
- 40.32 Formal rules be established to permit appeals of summary trials of minor disciplinary misconduct by way of redress of grievance.
- 40.33 All Canadian Forces members convicted at summary trials be served with a notice stating that an application for redress of grievance is available to appeal their conviction.
- 40.34 The *Queen's Regulations and Orders* be amended so that the Minister of National Defence has no adjudicative role in redress of grievance matters.
- 40.35 The *National Defence Act* be amended to
- replace the office of the Judge Advocate General with two independent institutions:
 - the office of the Chief Military Judge, to assume the judicial functions now performed by the office of the Judge Advocate General; and
 - the office of the Director General of Military Legal Services, to assume the prosecution, defence and legal advisory roles now performed by the office of the Judge Advocate General;
 - specify that the office of the Director General of Military Legal Services consists of three branches: a Directorate of Prosecutions, a Directorate of Advisory Services, and a Directorate of Legal Defence;
 - provide that the Director General of Military Legal Services report to the Minister of National Defence;

- (d) provide that the Chief Military Judge and all other judges be civilians appointed under the federal *Judges Act*; and
- (e) state that judges trying serious disciplinary and criminal misconduct are totally independent of the military chain of command.

40.36 The *National Defence Act* be amended to establish an Office of the Inspector General, headed by an Inspector General with the following functions relating to military justice:

- (a) Inspection: Inspections would focus on systemic problems within the military justice system.
- (b) Investigations: The Inspector General would receive and investigate complaints about officer misconduct and about possible injustices to individuals within the Canadian Forces. Among the types of officer misconduct the Inspector General could investigate are the following:
 - (i) abuse of authority or position (for example, failure to investigate, failure to take corrective actions, or unlawful command influence); and
 - (ii) improper personnel actions (for example, unequal treatment of Canadian Forces members, harassment including racial harassment, failure to provide due process, reprisals).
- (c) Assistance: Among the Inspector General's functions would be to correct or assist in correcting injustices to individuals.

40.37 The Inspector General have the power to inspect all relevant documents, conduct such interviews as may be necessary, review minor disciplinary proceedings and administrative processes, and make recommendations flowing from investigations.

40.38 Any person, Canadian Forces member or civilian, be permitted to complain to the Inspector General directly.

40.39 To the extent that the regulations and orders contained in the *Queen's Regulations and Orders* and Canadian Forces Administrative Orders can be made public without compromising overriding interests such as national security, the QR&O and CFAO be published in the *Canada Gazette*.

- 40.40 Adequate numbers of legal officers be deployed with units to allow them to perform their respective functions — prosecution, defence, advisory — without putting them in situations of conflict of interest.
 - 40.41 Legal officers receive increased training in matters of international law, including the Law of Armed Conflict.
 - 40.42 Legal officers providing advisory services be deployed on training missions as well as actual operations.
 - 40.43 Legal officers providing advisory services guide commanding officers and troops on legal issues arising from all aspects of operations, including Rules of Engagement, the Law of Armed Conflict, Canadian Forces Organization Orders and Ministerial Organization Orders.
 - 40.44 Legal officers providing advisory services educate Canadian Forces members before and during deployment on local law, the Law of Armed Conflict, and Rules of Engagement.
 - 40.45 A Law of Armed Conflict section of legal officers be established and staffed as soon as possible within the office of the Judge Advocate General and moved to the office of the Director General of Military Legal Services once that office is established.
-

Conclusion

We recommend that:

1. The Minister of National Defence report to Parliament by June 30, 1998 on all actions taken in response to the recommendations of this Commission of Inquiry.
2. The transcripts of our proceedings, as amplified and illuminated by the credibility findings in this report, be examined comprehensively by appropriate authorities in the Department of National Defence and the Canadian Forces, with a view to taking appropriate and necessary action with regard to witnesses who by their actions and attitude flouted or demeaned:
 - (a) their oath or solemn affirmation;
 - (b) their military duty to assist the Inquiry in its search for the truth in the public interest;
 - (c) the trust and confidence of Canadians in them; or
 - (d) the officer's commission scroll, which expresses Her Majesty's special trust and confidence in a Canadian officer's loyalty, courage and integrity.
3. Save for those individuals who have been disciplined for actions in relation to the deployment, all members of the Canadian Forces who served in Somalia receive a special medal designed and designated for that purpose.

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P.C. 1995-442

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General
 on the 20th day of March, 1995



The Committee of the Privy Council, on the recommendation of the Minister of National Defence, advise that a Commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing the Honourable Gilles Létourneau as Commissioner and Chairperson, and Anne-Marie Doyle and Peter Desbarats as Commissioners, to inquire into and report on the chain of command system, leadership within the chain of command, discipline, operations, actions and decisions of the Canadian Forces and the actions and decisions of the Department of National Defence in respect of the Canadian Forces deployment to Somalia and, without restricting the generality of the foregoing, the following matters related to the pre-deployment, in-theatre and post-deployment phases of the Somalia deployment:

Pre-Deployment (prior to 10 January 1993)

- (a) the suitability of the Canadian Airborne Regiment for service in Somalia;
- (b) the mission and tasks assigned to the Canadian Airborne Regiment Battle Group (CARBG) and the suitability of its composition and organization for the mission and tasks assigned;
- (c) the operational readiness of the CARBG, prior to deployment, for its mission and tasks;
- (d) the adequacy of selection and screening of officers and non-commissioned members for the Somalia deployment;
- (e) the appropriateness of the training objectives and standards used to prepare for deployment of the Airborne Regiment;
- (f) the state of discipline within the Canadian Airborne Regiment prior to the establishment of the CARBG and within the CARBG prior to deployment;

Commission of Inquiry into the Deployment of Canadian Forces to Somalia Commission d'enquête sur le déploiement des Forces canadiennes en Somalie	
EXHIBIT / PIÈCE	<u>P-1</u>
FILED / DÉPOSÉE	<u>May 24, 1995</u>
Ref.	<u>Omaril L. MARTEL</u>

P.C. 1995-442

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- (g) the effectiveness of the decisions and actions taken during the training period prior to deployment by leadership at all levels of the Airborne Regiment to prepare for its mission and tasks in Somalia;
- (h) the effectiveness of the decisions and actions taken by leadership at all levels within Land Forces Command to resolve the operational, disciplinary and administrative problems that developed in the Canadian Airborne Regiment and the CARBG in the period leading up to the CARBG deployment to Somalia;
- (i) the effectiveness of the decisions and actions taken by Canadian Forces leadership at all levels to ensure that the CARBG was operationally ready, trained, manned and equipped for its mission and tasks in Somalia;

In-Theatre (10 January 1993 to 10 June 1993)

- (j) the mission and tasks of the Canadian Joint Task Force Somalia and the suitability of the composition and organization of the Task Force for its mission and tasks;
- (k) the manner in which the Task Force conducted its mission and tasks in-theatre and responded to the operational, disciplinary and administrative problems encountered, including allegations of cover-up and destruction of evidence;
- (l) the extent, if any, to which cultural differences affected the conduct of operations;
- (m) the attitude of all rank levels towards the lawful conduct of operations, including the treatment of detainees;
- (n) the appropriateness of professional values and attitudes in the Task Force and the impact of deployment in Somalia on those values and attitudes;

- 3 -

- (o) the extent to which the Task Force Rules of Engagement were effectively interpreted, understood and applied at all levels of the Canadian Forces chain of command;
- (p) the effectiveness of the decisions and actions taken by leadership at all levels of the chain of command within the Task Force in response to the operational, disciplinary and administrative problems encountered during the deployment;
- (q) the effectiveness with which information concerning operations, discipline and administration and problems encountered in-theatre was reported through the chain of command:
 - (i) within the Canadian Joint Task Force Somalia,
 - (ii) from Canadian Joint Task Force Somalia Headquarters to National Defence Headquarters,
 - (iii) within National Defence Headquarters;
- (r) the effectiveness of the decisions and actions taken by leadership at all levels of National Defence Headquarters in response to the operational, disciplinary and administrative problems encountered during the Somalia deployment;

Post-Deployment (11 June 1993 to 28 November 1994)

- (s) the manner in which the chain of command of the Canadian Forces responded to the operational, disciplinary and administrative problems related to the Somalia deployment.

The Committee do further advise that:

1. pursuant to section 56 of the *Judges Act*, the Honourable Gilles Létourneau be authorized to act as a Commissioner on the inquiry;

P.C. 1995-442

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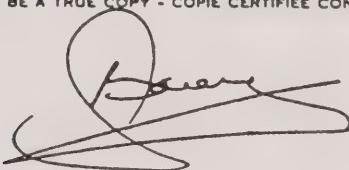
2. the Commissioners be authorized to adopt such procedures and methods as they may consider expedient for the proper conduct of the inquiry, and to sit at such times and in such places in Canada as they may decide;
3. the Commissioners be authorized to rent such space and facilities as may be required for the purposes of the inquiry, in accordance with Treasury Board policies;
4. the Commissioners be authorized to engage the services of such experts and other persons as are referred to in section 11 of the *Inquiries Act*, at such rates of remuneration and reimbursement as may be approved by Treasury Board;
5. the Commissioners be directed that the proceedings of the inquiry be held in-camera where necessary to protect information relating to national security or in any other matter where the Commissioners consider it necessary in the public interest;
6. the Commissioners be directed, in making their report, to consider and take all steps necessary to protect classified information;
7. the Commissioners be directed to follow established security procedures with respect to persons engaged pursuant to section 11 of the *Inquiries Act* and the handling of classified information at all stages of the inquiry;
8. the Commissioners be directed to submit a final report in both official languages to the Governor in Council not later than December 22, 1995; and

P.C. 1995-442

- 5 -

9. the Commissioners be directed to file the papers and records of the inquiry with the Clerk of the Privy Council as soon as reasonably may be after the conclusion of the inquiry.

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P.C. 1995-614



Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General
on the 23rd day of April, 1995

The Committee of the Privy Council, on the recommendation of the Minister of National Defence, advise that

- (a) a Commission do issue under Part I of the Inquiries Act and under the Great Seal of Canada amending the Commission issued pursuant to Order in Council P.C. 1995-442 of March 20, 1, 1995 and appointing the Honourable Robert Campbell Rutherford to be a Commissioner to inquire into the matters described in the Commission issued pursuant to Order in Council P.C. 1995-442 of March 20, 1995, to replace Anne-Marie Doyle who has resigned; and
- (b) pursuant to section 56 of the Judges Act, the Honourable Robert Campbell Rutherford be authorized to act as a Commissioner on the inquiry.

Commission of Inquiry into the Deployment of Canadian Forces to Somalia Commission d'enquête sur le déploiement des Forces canadiennes en Somalie	
EXHIBIT / PIÈCE	P-2
FILED / DÉPOSÉE	May 24, 1995
Ref.	O'Martel L. MARTEL

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CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVE

P.C. 1995-1273

Certified to be a true copy of a Minute of a Meeting of the Committee of the
Privy Council, approved by His Excellency the Governor General
on the 26th day of July, 1995



WHEREAS the Commission of Inquiry into the Deployment of Canadian Forces to Somalia was directed to submit a final report to the Governor in Council, not later than December 22, 1995;

AND WHEREAS the Commission will not be in a position to submit its report on or prior to December 22, 1995;

THEREFORE, the Committee of the Privy Council, on the recommendation of the Prime Minister, pursuant to Part I of the Inquiries Act, advise that a commission do issue amending the commission issued pursuant to Order in Council P.C. 1995-442 of March 20, 1995, as amended by the commission issued pursuant to Order in Council P.C. 1995-614 of April 23, 1995, by replacing paragraph (z.1) by the following:

"to submit a final report in both official languages to the Governor in Council not later than June 28, 1996, and"

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CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVE

P.C. 1996-959



PRIVY COUNCIL

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Privy Council, approved by His Excellency the Governor General
on the 20th day of June, 1996

Whereas the Commission of Inquiry into the Deployment of Canadian Forces to Somalia was directed to submit a final report to the Governor in Council, not later than June 28, 1996;

And whereas the Commission will not be in a position to submit its report on or prior to June 28, 1996;

Therefore, the Committee of the Privy Council, on the recommendation of the Prime Minister, pursuant to Part I of the *Inquiries Act*, advise that a commission do issue amending the commission issued pursuant to Order in Council P.C. 1995-442 of March 20, 1995, as amended by the commissions issued pursuant to Order in Council P.C. 1995-614 of April 23, 1995 and Order in Council P.C. 1995-1273 of July 26, 1995, by replacing paragraph (z.1) with the following:

"(z.1) to submit a final report in both official languages to the Governor in Council not later than March 31, 1997, and"

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CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL

P.C. 1997-174



PRIVY COUNCIL

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 4th day of February, 1997

Whereas the Commission of Inquiry into the Deployment of Canadian Forces to Somalia was directed to submit a final report to the Governor in Council not later than March 31, 1997;

And whereas the Commission will not be in a position to submit its report on or prior to March 31, 1997;

And whereas in order to meet its new reporting date the Commission should conclude public hearings on or about March 31, 1997;

And whereas it is in the public interest that the Commission make available to the public certain studies it has prepared in the course of its inquiry;

Therefore, the Committee of the Privy Council, on the recommendation of the Prime Minister, pursuant to Part I of the *Inquiries Act*, advise that a commission do issue amending the commission issued pursuant to Order in Council P.C. 1995-442 of March 20, 1995, as amended by the commissions issued pursuant to Orders in Council P.C. 1995-614 of April 23, 1995, P.C. 1995-1273 of July 26, 1995 and P.C. 1996-959 of June 20, 1996, by

(a) deleting the word "and" at the end of paragraph (v), by adding the word "and" at the end of paragraph (w) and by adding the following after paragraph (w):

"(w.1) the Commissioners to publish in both official languages studies prepared in the course of the inquiry, at such times as the Commissioners deem to be appropriate;"; and

(b) replacing paragraph (z.1) with the following:

"(z.1) to conclude public hearings on or about March 31, 1997 and to submit a final report in both official languages to the Governor in Council not later than June 30, 1997, and"

P.C. 1997-456



PRIVY COUNCIL

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General
on the 3rd day of April, 1997

Whereas the Commission of Inquiry into the Deployment of Canadian Forces to Somalia was directed to submit a final report to the Governor in Council not later than June 30, 1997;

And whereas the Government intends to proceed with the reform of the Canadian Forces and wants to receive the views of the Commission of Inquiry as soon as possible;

And whereas the Government recognizes that the Commissioners will not be able to address all issues within their mandate;

Therefore, the Committee of the Privy Council, on the recommendation of the Prime Minister, pursuant to Part I of the Inquiries Act, advise that a commission do issue amending the commission issued pursuant to Order in Council P.C. 1995-442 of March 20, 1995, as amended by the commissions issued pursuant to Orders in Council P.C. 1995-614 of April 23, 1995, P.C. 1995-1273 of July 26, 1995, P.C. 1996-959 of June 20, 1996 and P.C. 1997-174 of February 4, 1997, by replacing paragraph (z.1) with the following:

"(z.1) to submit a final report in both official languages to the Governor in Council on or before June 30, 1997, addressing the issues referred to in paragraphs (a) to (i), and notwithstanding any other provision of this commission, the Commissioners shall have the discretion to determine whether, and the extent to which, they will inquire and report on the issues referred to in paragraphs (j) to (s) within the time frame provided, and"

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CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVE

APPENDIX 1 TO ANNEX A
TO THE STATEMENT BY THE BOI CARBG
PHASE I VOL XI 19 JULY 93

Terms of Reference

Board of Inquiry

(as amended on 9 July 1993)

1. An investigation shall be conducted pursuant to subsection 45(1) of the National Defence Act and in accordance with the provisions of Queen's Regulations and Orders for the Canadian Forces Chapter 21 and Canadian Forces Administrative Order 21-9.

2. The Board of Inquiry, is composed of;

President	-	Major-General T.F. de Faye, OMM, CD
Member	-	*Brigadier-General C.J. Addy, CD
Member	-	Brigadier-General J.C.A. Emond, CD
Member	-	Professor Harriet Critchley
Adviser	-	Lieutenant-Colonel K.W. Watkin, CD
Adviser	-	Chief Warrant Officer J. Marr, OMM, CD
Special Adviser	-	Mr. Jacques Bellemare
Special Adviser	-	Mr. Stephen Owen

3. The Board of Inquiry shall assemble to investigate the leadership, discipline, operations, actions and procedures of the

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TO THE STATEMENT BY THE BOI C
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Canadian Airborne Regiment Battle Group. To the extent relevant to a determination of those issues, the Board of Inquiry shall investigate the Battle Group's antecedents in Canada and higher headquarters in Somalia prior to and during its employment in Somalia. During the first phase no inquiry shall be made into any allegation of conduct that would be a service offence under the National Defence Act, and in particular any Criminal Code offence, that has resulted in the laying of a charge, the arrest of a person or the ordering of a military police investigation. The second phase of the Board of Inquiry proceedings may inquire into such conduct or allegations thereof. The Board of Inquiry shall commence the second phase of its proceedings as soon as practicable after notification by the Judge Advocate General that all *sub judice* matters or incidents under investigation by the Military Police are disposed of, or the legal issues which necessitated the limitations in paragraph 3 of the original Terms of Reference are resolved.

4. Should the Board of Inquiry receive evidence it reasonably believes relates to an allegation of a service offence, including a Criminal Code offence, other than those referred to in paragraph 3, for which an election to be tried by court martial must be given pursuant to article 108.31(1)(a) of Queen's Regulations and Orders for the Canadian Forces, or that can only be tried by court martial, the Board of Inquiry shall

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cease the inquiry into that allegation and report the matter to the Convening Authority.

5. In conducting the investigation, the board shall gather information and provide findings and recommendations in respect of the matters referred to in paragraph 3 including, but not limited to, the following:

- a. the state of discipline during training leading up to the deployment to Somalia and while in theatre;
- b. the training objectives and standards which were used to prepare for deployment;
- c. the selection and screening of personnel for employment in Somalia;
- d. the effectiveness of leadership at all levels during training leading up to the deployment and while in theatre;
- e. the adequacy of the promulgation and understanding of the Rules of Engagement within the Airborne Regiment Battle Group;

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- f. the Airborne Regiment Battle Group's composition and organization related to its mission and tasks assigned;
 - g. the extent, if any, to which cultural differences affected the conduct of operations;
 - h. the attitude of all rank levels towards the lawful conduct of operations; and,
 - i. the appropriateness of professional values and attitudes in the Canadian Airborne Regiment and the impact of deployment in Somalia on those values and attitudes.
6. In addition, but subject to paragraph 3 and 4, the Board of Inquiry will make recommendations on any other matter arising from its inquiry.
7. The President may seek authorization from the Convening Authority for additions and/or amendments to these Terms of Reference.
8. Pursuant to article 21.12 of Queen's Regulations and Orders, the proceedings of the Board of Inquiry shall not be open to the public.

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9. The Minutes of Proceedings of the Board of Inquiry shall be unclassified except as otherwise provided for by law.

10. The Minutes of Proceedings of the Board of Inquiry shall be made available to the public except as otherwise provided for by law.

11. The Board of Inquiry shall commence its proceedings as soon as practicable.

12. The Board of Inquiry shall submit its Minutes of Proceedings to the Convening Authority no later than 30 July, 1993. The second phase of the Minutes of Proceedings shall be submitted to the Convening Authority no later than 90 days from the date upon which it reassembles.

11 July 1993

J.R. Anderson
J.R. Anderson
Admiral
Chief of Defence Staff

APPENDIX 2

Persons and Organizations with Standing

No.	PARTIES	STANDING
1	Attorney General of Canada	Full
2	Urban Alliance on Race Relations	Full
3	Canadian Airborne Forces Association	Limited
4	Canadian Jewish Congress	Full
5	Right Honourable Kim Campbell	Full
6	Major General Lewis MacKenzie	Full
7	Major Barry Armstrong	Full
8	Major General Brian Vernon	Full
9	Brigadier General Ernest B. Beno	Full
10	Elvin K. Brown	Full
11	B'Nai Brith Canada	Full
12	The Coalition of Somali Canadian Organizations	Full
13	Colonel J.S. Labb��	Full
14	Lt Colonel Carol Mathieu	Full
15	LCol Paul R. Morneault	Full
16	Major Anthony Seward	Full
17	Major Vincent J. Buonamici	Full
18	Captain (Ret'd) Michel Rainville	(March 4th Incident only)
19	Captain Neil Gibson	(March 16th Incident only)
20	Admiral (Ret'd) Anderson	Full
21	Lieutenant Michael Sox	(March 16th Incident only)
22	The African Canadian Legal Clinic	Limited

APPENDIX 3

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Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, TUESDAY, FEBRUARY 4, 1997

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
 Commissioners

Commission of Inquiry into the Deployment of Canadian Forces to Somalia	
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In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon;

And in the Matter of the Application for Standing of John Edward Dixon.

Appeared:

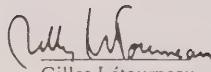
JOHN EDWARD DIXON

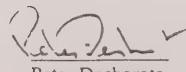
Applicant

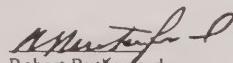
ORDER

As regards the orders sought by Mr. Dixon:

1. The application for standing is dismissed.
2. The application for an order directing that Mr. Dixon's affidavit of January 27, 1997 be accepted into evidence and filed as a public exhibit is dismissed.


Gilles Létourneau,
Chairman


Peter Desbarats,
Commissioner


Robert Rutherford,
Commissioner

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
Sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, TUESDAY, FEBRUARY 4, 1997

CORAM: Gilles Létourneau
Peter Desbarats
Robert Rutherford
Commissioners

Commission of Inquiry into the Deployment of Canadian Forces to Somalia	
F I L E D	P R O D U T
FEV 4 1997	S. FRASER
Registrar / Greffière	
Commission d'enquête sur le déploiement des Forces canadiennes en Somalie	

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon;

And in the Matter of the Application for Standing of Marianne Campbell;

And in the Matter of the Application for Standing of John Edward Dixon.

Appeared:

JOHN EDWARD DIXON

And

MARIANNE CAMPBELL

Applicants

REASONS FOR ORDER

Two applications for full standing brought late in our process are discussed in these reasons. They are dealt with together since these individual applicants (Ms. Marianne Campbell and Mr. John Edward Dixon) have a mutuality of interest and are seeking similar relief, for similar reasons. Both Ms. Campbell and Mr. Dixon served as senior aides to the Right Honourable Kim Campbell, who has been a party to the proceedings of the Commission of Inquiry since its earliest days.

These applications have been precipitated by the release by the Commission of Inquiry of

certain documents as part of the official public record and by the Applicants' belief that the documents in question unfairly impugn their reputations. The Applicants believe that this unfairness can only be off-set by testifying before the Commission of Inquiry and enjoying wide latitude to examine and cross-examine witnesses. Ms. Campbell has also requested that her affidavit, sworn January 26, 1997, be accepted into evidence and filed as a public exhibit. Mr. Dixon makes a similar request regarding his affidavit of January 27, 1997. (In reality, both applicants have little need for the public filing of their affidavits in our proceedings, since they have already seen to their general release and public dissemination by annexing their affidavits to their applications for standing.)

In the ordinary course of events, there would be little, if any, credible basis for sustaining an application for standing by an individual having the kind of marginal relationship to the Inquiry's proceedings that either Ms. Campbell or Mr. Dixon does. On the other hand, the course of events that have inspired Mr. Dixon's and Ms. Campbell's applications are far from ordinary.

There is little, if any, doubt that, as Policy Advisor and Legislative Assistant to the Right Honourable Kim Campbell, Ms. Marianne Campbell is a prospective witness who has evidence to disclose that is relevant and of importance to the Inquiry's terms of reference. Being a witness with relevant evidence to give - even important evidence - however, does not thereby entitle one to full standing before a Commission of Inquiry. The same may also be said of Mr. Dixon, who served as a Special Advisor to Ms. Kim Campbell during her tenure as Minister of National Defence.

It is in the nature of public inquiries, especially inquiries having an investigatory mandate to fulfil, to gather, receive and ultimately to place on the public record the documentation that is relevant to the issues which the inquiry is charged with exploring. The Somalia Inquiry has been notable for the sheer bulk and breadth of the relevant documentation that it has unearthed and placed upon the public record in the course of its investigation. As key players within the Minister's office during a crucial time period in 1993, it was inevitable that some documentation either addressed to, emanating from or affecting them, would be tabled before the Inquiry and become part of the public record.

It is also a much to be regretted fact of these proceedings that all of the relevant

documentation that the Commission of Inquiry had a right to expect to be disclosed from the Department of National Defence and the Government of Canada has not been disclosed. Important documentation clearly covered by the Inquiry's order of April 21, 1995 has either gone missing, been altered or destroyed, or has simply not been divulged. This means that, to a certain extent, the documentary public record of the Somalia Operation will always be incomplete. There is, thus, in this type of hampered investigatory process, an element of unfairness - if only for the reason that individuals may claim that facts contained in the missing documentation could serve to place them, or colour their involvement, in a different, usually more favourable, light. This unfairness (although somewhat differently expressed in the material they have filed) lies at the heart of Mr. Dixon's and Ms. Campbell's respective applications for standing. Their affidavits attach and refer to unfiled documents that they feel off-set and refute information contained in the documentary material filed before the Inquiry to date.

Any prospective witness - indeed, any individual in possession of relevant information - should feel free to bring such information to the attention of the Commissioners or their counsel, who will then assess the utility of placing it upon the public record. The material attached and referred to in the Dixon and the Campbell affidavits is of this nature. The relevant documents thus disclosed to us by the applicants merit a place within the public record and, upon being severed from the affidavits, will be filed in our proceedings. The affidavits themselves, however, are a form of indirect testimony that the Commissioners are reluctant to entertain at this time.

The interpretations placed upon their documents by the Applicants in their affidavits reveal a larger matter of complaint that merits comment from us at this time. This has to do with the origins of the unfairness that the Applicants are attempting to redress through the medium of their applications.

The greatest unfairness to the Applicants and the prime moving cause of these applications derives from the foreshortening of this Inquiry's life by the Government.

Public inquiries are unique creatures on the political landscape. Almost invariably they are reluctantly called into being as a result of political imperatives and carry with them the potential for public embarrassment and sustained controversy. Beyond these considerations,

the desire for an independent, objective inquiry reflects the public's desire to get to the bottom of an issue that is of real and immediate concern.

Notwithstanding the cynicism that pervades assessments of the motivations inspiring the creation of inquiries the prevailing wisdom is that "despite a widespread view that [inquiries] are used principally to delay action while removing embarrassment from the immediate vicinity of governments, it is a fact that commissions of inquiry have repeatedly - and often highly successfully - served as vehicles for analysing policy, for evaluating outworn or failed policy, for identifying consensus about policy and for building support for new policy directions."¹ Commissioners in the past have accepted invitations to serve on inquiries out of the strong belief that in doing so they will be serving the public interest and the public's right to know about the true facts concerning matters of importance to the Canadian people.

An inquiry is ordinarily struck because no other entity on the political landscape has the necessary detachment and objectivity to properly probe or examine the contentious issues upon which the public seeks enlightenment. It is not immodest to suggest that no mechanism is better equipped than a public inquiry to examine the kind of vexing questions that have been posed for consideration in the Somalia context. Public Inquiries, unlike the judiciary or the legislature, in pursuit of the truth are able to adopt procedures and methods for accomplishing their mandate which would be inappropriate in other arenas.

Public inquiries are an important aspect of government and the democratic process, although they do not fall squarely within any of the traditional branches of government - legislative, executive or judicial. They have a specialized role within the government and the legal system; they supplement the main institutions of government by performing tasks that the government institutions do less well. If inquiries are to be placed anywhere, it is ordinarily within the Executive branch of Government, although there is a recognition that this is not a totally comfortable fit since "a Commission of Inquiry is not a unit of the Executive branch of Government like other Government Departments and agencies."²

¹ Pross, Christie, Yogis, *Commissions of Inquiry*, Carswell: Toronto, Calgary, Vancouver, 1990, p. 1

² *Re Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police* (1978) 44 CCC (2d) 201 at p.205

If anyone or any body were to "get to the bottom of the Somalia affair," it is now well beyond debate that it takes an independent and impartial third party to do so. Certainly, the Government in creating the Somalia Inquiry must initially have thought as much, since the route of a less detached internal inquiry (a "board of inquiry") had already been tried and, while an impressive amount of work had been done by that board of inquiry, the public thirst for better information about and answers relating to the Somalia deployment had not been, and, in the circumstances probably could not have been, adequately quenched by that process.

It is now well understood that the Government, in choosing to cut off this inquiry in the course of its investigation, has precluded an examination of crucial aspects of the Somalia Affair, including *inter alia* the vital aspects of possible cover-up within the higher ranks of the military and the adequacy of the response of the Canadian Forces and National Defence Headquarters to the myriad problems that were encountered by Canadian troops in the Somalia theatre.

Both applicants have linked their interest in becoming parties to their knowledge concerning allegations of a cover-up in relation to the March 16, 1993 incident that resulted in the torture death of Shidane Arone. Their applications, if they do not explicitly request the Commissioners to put aside everything that they are presently probing and move to the matters that are of concern to the Applicants, do so at least by implication. By this reasoning, in the limited time remaining to them, the Commissioners should simply drop everything that they are presently examining (in particular, the March 4, 1993 shooting death and the origins of a potential high level cover-up in relation thereto) and proceed to the very top of the military and bureaucratic\political ranks in order to call witnesses such as former Minister Campbell, former Deputy Minister Fowler, former Chief of Defence Staff Anderson and others. The Commissioners are, in effect, asked to do so, rather than hear from the commanders in the field, Colonel Labb   and Lieutenant Colonel Mathieu. This is, quite simply, not a realistic suggestion.

First, it bears noting that the Commissioners do not have anywhere near the time available to them for the calling of witnesses that the applicants' suggestion implies. A substantial amount of precious hearing time must be reserved to ensure fairness to such individuals who have received notices pursuant to section 12 and 13 of the **Inquiries Act** and are likely to be

adversely affected by what may be said of their conduct in the final report of the Inquiry.

Second, the Commissioners believe that proceeding as suggested would undermine the careful and effective pursuit of the truth. This would be unfair to the prospective witnesses. In addition, it would be irresponsible in the context of a probe into the existence of a cover-up to fail at the outset to construct the necessary foundation of direct and circumstantial evidence for a proper and searching examination. This must be done brick by brick, through the careful assembly of facts, documents and circumstances. Evidence on such important matters presented without the possibility of real or substantial testing risks producing a whitewash of the alleged cover-up rather than an investigation of it.

The complaints of Ms. Campbell and Mr. Dixon regarding unfairness to them flow primarily from the determination by the Government to circumscribe and abbreviate the freedom of action of this Inquiry. Their evidence, were this Inquiry allowed to completely discharge its mandate, would indeed command our attention - certainly insofar as it relates to the "crucial aspects", described above, that we have now determined that we are unable to investigate. We sympathize with their frustration but are unable to agree with their suggested methods for off-setting the prejudice they perceive in the present state of affairs.

The Applicants have, in effect, asserted that the decision to cut off this public inquiry in the middle of its investigation - at a point in time when its concerns have just begun to centre upon the role and responsibilities of high-ranking governmental officials - poses a serious challenge to democratic institutions and to democracy itself. The Commissioners agree and are only too painfully aware of this reality.

As they have previously stated, the Commissioners have foregone resignation as an answer to the Government's decision to truncate their mandate in the belief that the Canadian people have a right to their views on the matters that they have been able to deeply probe to date. This includes the important matters of leadership and accountability as they have been revealed through the pre-deployment and arrival-in-Somalia phases; the important pre-deployment issues of discipline, selection and screening, training, rules of engagement, and declarations of operational readiness; the lessons learned in the document alteration\DGPA phase; and the significance of the events that transpired in Somalia on March 4, 1993.

While they undoubtedly have valid personal concerns that have necessitated their applications to this Inquiry, Ms. Campbell and Mr. Dixon are to be commended for their obvious concern for the integrity of the over-all process.

In the result, as regards the orders sought by Ms. Campbell:

1. The application for standing should be dismissed.
2. The application for an order directing Ms. Campbell to be called as a witness with respect to the matters raised in the memorandum of Captain Fred Blair should be dismissed.
3. The application for an order directing that Ms. Campbell's affidavit of January 26, 1997 be accepted into evidence and filed as a public exhibit should be dismissed.

As regards the orders sought by Mr. Dixon:

1. The application for standing should be dismissed.
2. The application for an order directing that Mr. Dixon's affidavit of January 27, 1997 be accepted into evidence and filed as a public exhibit should be dismissed.


Gilles Létourneau,
Chairman


Peter Desbarats,
Commissioner


Robert Rutherford,
Commissioner

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, THURSDAY, AUGUST 3, 1995

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
 Commissioners

Commission of Inquiry into the Deployment of Canadian Forces to Somalia	
F I L E D	AUG AOUT 3 1995 L U PRO D U T
LINDA MARTEL Registrar / Greffière Commission d'enquête sur le déploiement des Forces canadiennes en Somalie Ottawa, Ontario	

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c.I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon.

STATEMENT ON THE TERMS OF REFERENCE

Participants at the Inquiry have asked the Commission to review its Terms of Reference and determine:

- a) whether it intends to inquire into and report on the disbandment of the Canadian Airborne Regiment announced by the Minister of National Defence on January 23, 1995 in a press conference;
- b) whether it will investigate additional incidents that allegedly occurred in Somalia during the deployment of the Canadian Forces, but which have so far not been reported;
- c) whether it will inquire into and report on the state of human rights and racism in the military, including any attempt by extremist groups to infiltrate it.

The need for an early determination of the scope of the Terms of Reference

The participants at the inquiry, especially those whose leadership and decisions are under review, are entitled to know early in the process the scope of the inquiry that the Commission intends to conduct. Fairness requires that they be apprised of the Commission's understanding of its Terms of Reference in order to fully and adequately prepare for the evidentiary hearings. Doubts and ambiguities in the Terms of Reference ought to be resolved so that the participants cannot be misled and, thereby, prejudiced.

This is true as well for Commission counsel who have to organize the hearings, call the witnesses and provide adequate and meaningful disclosure to the participants. For a fair and appropriate planning of their work within the time-frame allocated, they have to know soon in the process the direction the inquiry will take and the inherent limits to the Terms of Reference.

The procedure followed

The Commission has requested, from all the participants, written submissions on the three issues previously mentioned. It believes this process to be an expeditious way of dealing with the matter at minimum expense and inconveniences for the parties. Counsel for the Commission filed their submissions first on July 11, 1995 and a copy was served to each participant who was then given until July 24th to file his or her own views as to the scope of the Terms of Reference in relation to these matters.

The Commission received useful submissions from counsel for Her Majesty the Queen, Major-General Vernon, Major-General MacKenzie, Colonel Labb , Major Armstrong, B'Nai Brith Canada, the Coalition of Somali-Canadian Organizations, the

Canadian Jewish Congress, the Urban Alliance on Race Relations and the Canadian Airborne Forces Association. Counsel for the Right Honourable A. Kim Campbell and Brigadier General Beno declined to comment on these jurisdictional issues.

In a letter addressed to the Commission on July 10, 1995, with copies served on other participants, counsel for The Urban Alliance on Race Relations objected, on the following basis, to the procedure established by the Commission. He was the only one to object to this process and reiterated his objection in his written submissions.

First, counsel wanted the Commission to hear evidence before interpreting the Terms of Reference. He submitted that such factual evidence was necessary "to establish why the questions raise issues that the Commission has jurisdiction to explore" and "why it is essential in the public interest that these issues be explored". His wishes to have evidence called could have made sense if the jurisdiction of this Commission had been conditional on jurisdictional facts which needed to be established. But this is not the case and counsel has not pointed out any such fact.

In addition, while in counsel's view it may be essential in the public interest that the issues in question be explored, these issues clearly cannot be the subject of the inquiry if they fall outside the Terms of Reference as explained below.

Counsel's approach would lead to a factual inquiry into the Terms of Reference to determine the scope of the inquiry established by these Terms of Reference. With respect, the Commission sees no point in doing that in order to decide the three questions submitted to the parties which relate to an interpretation of the wording of the Terms of Reference. They all involve a question of law or jurisdiction which finds its resolution in the wording of the Terms.

Second, counsel complained about the process chosen by the Commission as he had not received any funding. Yet, paradoxically, he expressed in his letter his preference for oral hearings on the Terms of Reference which would have been much more inconvenient and costly for all the participants. He proposed that the process be delayed until the end of August with the professed hope to receive funding in the meantime.

The Commission has already stated its belief in the need and reasons for an early determination of the issues relating to the Terms of Reference. In this regard, the Commission is satisfied that the public process it adopted is reasonable and gave the participants fair and full opportunity to make submissions on the issues raised. It now turns to the analysis of these issues.

The Terms of Reference

For a proper understanding of the analysis, it is important to review the relevant portions of the Terms of Reference applicable to the issues.

In general terms, the Commission is to inquire into and report on the chain of command system, leadership within the chain of command, discipline, operations, actions and decisions of the Canadian Forces and the actions and decisions of the Department of National Defence *in respect of the Canadian Forces deployment to Somalia* (emphasis added).

These general terms are followed by a non limitative enumeration of matters to be investigated relating to the pre-deployment, in-theatre and post-deployment phases. With respect to each of these phases, a period of time is given which, as regards the post-deployment phase, covers the period between June 11, 1993 and November 28, 1994.

It is worth noting that the date of November 28, 1994 corresponds to the day the last military decision implicating the chain of command in relation to the Somalia operation was taken. At that time, the chain of command necessary for the Somalia operation ceased to exist.

It is trite to say that a Commission of Inquiry is limited by its Terms of Reference and, therefore, exceeds its jurisdiction when it purports to investigate or consider matters that are outside the Terms of Reference¹. Conversely, it wrongfully refuses to exercise its jurisdiction if it declines to investigate matters that are properly within the Terms of Reference because it erroneously believes those matters to be outside the ambit of those terms².

We agree with the opinion expressed by the McDonald Commission that a Commission cannot be directed to interpret its Terms of Reference in a certain fashion³. It is for the Commissioners to interpret them subject, of course, to judicial review⁴. In this latter case, the reviewing court cannot substitute its discretion for that of the Commission when the Commission has made a decision falling within the confines of its jurisdiction⁵.

¹ Alistair R. Lucas, *Public Inquiries*, Canadian Encyclopaedic Digest, vol. 27, Title 119.1, Carswell Thomson Professional Publishing, 1995, p. 22. See also *Re Bortolotti and Ministry of Housing* (1977), 76 D.L.R. (3d) 408, at 415 (C.A. Ont.); *Nova Scotia v. Marshall* [1989] 2 S.C.R. 788.

² *Id.*

³ *Re Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police* (1978) 44 C.C.C. (2d) 200, at p. 205.

⁴ *A.G. of Quebec v. A.G. of Canada (Keable no. 1)* [1979] 1 S.C.R. 218, at p. 249. *Dayco (Canada) Ltd. V. CAW-Canada* [1993] 2 S.C.R. 230, at p. 250-251.

⁵ *Nova Scotia v. Marshall* [1989] 2 S.C.R. 788, at p. 794.

Thus, within its Terms of Reference, the Commission has discretion to "priorize" its work and such priorities may be dictated by the relative importance of each topic, the length of the inquiry, the time-frame given and the financial, material and human resources allocated or available. This means that although some participants might prefer some matters to be investigated over others, the final decision rests with the Commission.

Whether the Commission should investigate the disbandment of the Canadian Airborne Regiment

The decision to disband the Canadian Airborne Regiment was taken on January 23, 1995, that is to say more than nineteen months after the return of the troops from Somalia and nearly two months after the chain of command ceased to exist. It is worth noting that the decision was made approximately two months prior to the establishment of this Commission of Inquiry. Yet the Terms of Reference do not specifically include this issue in the specific portion of the mandate. Indeed, they make no mention of it. Had it been the intent of the Government to have this decision reviewed, it could easily have included it in the specifics of the mandate. On the contrary, the Terms of Reference limit the post-deployment phase to the period ending on November 28, 1994 by the dissolution of the chain of command now under review and would, therefore, evidence an intent to exclude the decision to disband the unit made in 1995.

Furthermore, the decision to disband followed the showing on television of two videos, one depicting a commando-unit hazing ritual and the other filmed during the regiment's tour of duty in Somalia. Both videos contained racist and degrading acts.

In his press release, the Minister of Defence wrote:

"However the incidents in Rwanda last fall, which were subsequently investigated by the Chief of Defence Staff, and in combination with these two videos, demand action. I recognize that many changes in personnel and procedures in the Airborne have been made over the past year and that the people now serving are by and large dedicated professionals, however, I believe the problems of the regiment are systemic."⁶

The Minister ordered the disbandment of the Canadian Airborne Regiment, but at the same time required that measures be taken to ensure that the Airborne capability be restructured in order to satisfy the military needs at that level.

It is clear that the Commission's jurisdiction is not limited exclusively to decisions made and actions taken prior to November 28, 1994 which marks the dissolution of the Somalia chain of command. Some matters under investigation by our Commission are of on-going nature. The allegations of cover-up constitute the best example of such matter. Decisions could still be taken now to destroy or suppress existing evidence. Or a course of action may be currently taken which interferes with a witness' desire to testify and tell the truth. It would be proper for the Commission to investigate these decisions to determine whether they are part of the alleged cover-up which the Commission has the authority to investigate and report on under paragraph (k) of the Terms of Reference.

Having said that, it is also obvious that other decisions, either resulting from or related to the Somalia operation, have also been or will still be made by persons outside the chain of command which ceased to exist on November 24, 1995. For example, grievances have been filed by military personnel (Lt. Col. Morneau who was relieved of his position as Commanding Officer of the Canadian Airborne Regiment on October 23, 1992) and have been or will be heard by the appropriate authorities. The Career Review Board will review the military careers of those who have been found guilty of criminal or

⁶ *Speaking Notes for the Honourable David Collenette, P.C., M.P., Minister of National Defence, Press Conference, January 23, 1995, pp. 10-11.*

disciplinary charges. These decisions do not fall within the ambit of this inquiry notwithstanding that they were made necessary by the Somalia operation.

In our view, the Defence Minister's decision to disband the Airborne Regiment and restructure it differently is a decision of that same category and falls outside the scope of our inquiry for the following reasons.

The Terms of Reference invest us with the power to inquire into and report on the actions and decisions of the Department of National Defence *in respect of the deployment* of the Canadian Forces to Somalia (emphasis added). It is hard to see how the decision to restructure, for the future, a unit that was part of a larger unit (the Canadian Airborne Regiment Battle Group), made after the Somalia mission was completed and the larger unit was dismantled, can be a decision "in respect of the deployment" of that unit in that completed mission.

As a matter of fact, there is no vested right in any given organizational structure. Many factors or reasons usually underlie the administrative and discretionary review of an existing structure. Although such review often builds on the past, it is generally forward looking and may indeed break with the past. In the present instance, the Minister was no doubt influenced, in the exercise of his discretion, by the controversy-plagued mission in Somalia. From that limited perspective, one could perhaps be tempted to say that it was a decision in respect of the deployment of the Airborne Regiment. However, the Minister was also concerned with other incidents, systemic problems, the interests of the Canadian Forces, the international image of Canada and the public interest. In such circumstances, it is impossible to narrowly conclude that the decision to disband the unit is a decision in respect of the Somalia operation, still less a decision in respect of the deployment of the Canadian Forces to Somalia.

Furthermore, it is not altogether clear what purpose would be achieved by a review of that discretionary decision nor from what perspective the decision should be reviewed: political, administrative, military, sociological, anthropological? The decision may very well be justifiable from one perspective, but not from another. How does a finding of that nature further the purpose of the inquiry or advance it?

Assuming, for example, that the Commission is to review the appropriateness of the decision from a military perspective, the Commission would then have to assess the merits and demerits of the replacement structure and its capability to satisfy present and future needs at a level comparable to that of the disbanded structure. Or should it not be at a higher level? Should the new structure not be more efficient and less costly? Such an exercise required from the Commission has no relationship with the Somalia operation that the Commission has to investigate.

Even if one assumes that the Commission has jurisdiction under its Terms of Reference to investigate the disbandment of the Canadian Airborne Regiment, it is difficult to see what positive contribution this line of investigation would bring to a review of the chain of command established for the Somalia operation, the leadership within that chain of command and the disciplinary problems encountered prior to and during the operation. The Commission is satisfied that it can adequately address these matters without examining the decision to disband the unit.

In terms of opportunity, the Commission is also satisfied that few benefits would be gained from such investigation.

This does not mean, however, that no evidence relating to the disbandment of the Canadian Airborne Regiment can be admitted in the inquiry. Indeed, it may be that some evidence relating to the disbandment can be relevant to an issue properly before the Commission and, therefore, ought to be admitted. But the evidence would then be introduced to prove that issue and not as part of an inquiry into the disbandment of the unit. In other words, there is a world of difference between an inquiry into the very issue of the disbandment of the Airborne Regiment and an inquiry into another issue where evidence of the disbandment of the Airborne Regiment can be relevant to that issue.

Whether the Commission should investigate additional incidents that supposedly occurred in Somalia during the deployment of the Canadian Forces

The Commission is specifically required to investigate the institutional response to the operational and disciplinary problems encountered in Somalia during Operation deliverance, including allegations that there were cover-ups and attempts to cover up some of the incidents that occurred⁷. At least six significant incidents in-theatre were reported involving the death of Somalians and Canadians and an attempt to commit suicide. If more incidents of brutality or use of a firearm against Somalian people occurred at the hands of Canadian soldiers and were not reported, this could reveal the commission of unlawful acts, a violation of the rules of engagement, a lack of discipline, a dereliction of the duty to report, a violation of the rules regarding the treatment of detainees or a cover-up on the part of the persons involved and their superiors. The Commission has obviously no

⁷

See more precisely paragraph (k) of the Terms of Reference which reads:

(k) the manner in which the Task Force conducted its mission and tasks in-theatre and responded to the operational, disciplinary and administrative problems encountered, including allegations of cover-up and destruction of evidence.

jurisdiction to try these incidents and must not preempt or jeopardize their proper criminal or disciplinary prosecution.

However, such incidents would be relevant to the Commission in its efforts to ascertain the state of discipline and the adequacy of training prior to and during deployment in-theatre as well as the appropriateness of the response of the leadership within the chain of command to these problems.

The Commission hastens to add that numerous logistical problems surround any attempt to investigate today, in or from Canada, incidents which occurred more than two years ago in Somalia. Although the task is not insurmountable, it remains one which ought not to be underestimated.

Moreover, beyond matters of feasibility, there is also a question of opportunity. Not every incident obviously deserves to be investigated at any cost. In the Commission's view, for it to investigate these matters, there has to be more than mere suspicions based on double hearsay or unsubstantiated rumours. There has to be at least reliable allegations tending to show that the alleged incidents did take place. In addition, the incidents must be sufficiently serious or repetitive to warrant the undertaking of the investigation. A repetition of incidents, although not serious incidents, could reveal an unacceptable pattern in the execution of the mission as well as an objectionable tolerance or acceptance of that pattern.

Finally, it should be understood that there will be continuous re-evaluation of the evidence throughout the inquiry and that appropriate measures will be taken to complement prior investigations or initiate new ones as needed.

Whether the Commission should inquire into the state of human rights and racism in the military, including attempts by extremist groups to infiltrate it

Under the Terms of Reference, paragraph (I), the Commission is mandated to determine the extent to which cultural differences affected the operations in-theatre⁸. These operations are those of the Canadian Joint Task Force Somalia conducted in the field by the Canadian Airborne Regiment Battle Group composed of the Canadian Airborne Regiment with reinforcement in terms of mortar, armoured and engineer sub-units to form a quasi mechanized battle group.

The terms "cultural differences" are broader in scope than the issue of racism or human rights itself. They refer to all these sociological, anthropological, political, economic, intellectual and human characteristics which define a culture and serve to differentiate it from another.

In order to properly assess the impact of cultural differences on the conduct of operations, the Commission has to look at the appropriateness of the training objectives and standards of the Canadian Airborne Regiment Battle Group with respect to the Somalian culture and environment and the proper treatment of civilians and detainees, the adequacy of selection and screening of its officers and the state of discipline of its members with a view to determining the extent to which Somalian and human right values, and the need to protect and respect them, have been properly taught, understood and respected in the context of a peacemaking mission in a fundamentally different cultural environment.

The Terms of Reference set the parameters for an inquiry that is multi-dimensional, involving numerous issues, of which racism is but one; albeit an important one.

⁸ See paragraph (I) of the Terms of Reference which reads:
(I) the extent, if any, to which cultural differences affected the conduct of operations.

The inquiry as a whole is bounded by the necessity to investigate the deployment of Canadian troops to Somalia. The inquiry is not an investigation into the deployment of Canadian troops on peacekeeping missions in general and, by the same token, the aspect of racism that is to be investigated does not call for a general investigation of racism in the Canadian military as a whole. The issue of cultural differences and racism that is to be scrutinized must intimately relate to the deployment of troops to Somalia in order to validly fall within the Terms of Reference. While it would undoubtedly be of interest to examine the state of racism and human rights violations in the Canadian Forces in general, such an undertaking on the part of the Commission would change the focus of the inquiry beyond that comprehended by the Terms of Reference and would, if operationalized, outstrip the time and resources allocated to this Commission. More fundamentally, to embark upon such a general inquiry would amount to an excess of jurisdiction.

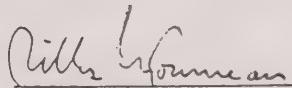
Again, as for the disbandment of the Airborne Regiment, this does not mean, however, that no evidence can be admitted of the state of racism in other regiments of the military. In investigating racism to the extent that our terms allow, the Commission will of necessity be required to investigate aspects of military operations possessing systemic dimensions and implications. Issues such as screening and training involve factual inquiries that lead beyond the narrow confines of any single regiment or unit and may require our analyzing various operations, procedures, manuals, training courses and curricula that may have system-wide application. A systemic problem may well gain definition through issue-specific analysis. A concentration on the Somalia operation may hold meaning for the military as a whole. Although the Commission is not in a position to embark on an exploration of the state of racism and human rights violations in the Canadian Forces in general, it is quite prepared to call and examine all relevant evidence for the purpose of doing justice to such issues as validly fall within its Terms of Reference.

In this context, it is worth re-emphasizing that the issue of admissibility of relevant evidence should not be confused with the issue of jurisdiction to investigate and report. For example, evidence relating to the training of the Airborne Regiment for the Western Sahara Operation (which was eventually cancelled) may be admissible to show the strenuous training of the Regiment for desert-like conditions and that such training was adequate for the Somalia Operation which involved similar conditions. However, this is not to say that the Commission established to review the Somalia Operation would have had jurisdiction under its present Terms of Reference to inquire into and report on the Western Sahara Operation.

Indeed, the admissibility of evidence of racism in the military as a whole presupposes the existence and availability of such evidence while an inquiry into this very issue is an inquiry both to uncover and collect evidence of racism and determine the existence and extent of such racism.

Conclusion

For these reasons, the Commission will not investigate and report on the disbandment of the Canadian Airborne Regiment and the state of human rights violations and racism in the Canadian military as a whole although it will be looking, in the context of the Somalia operation, at issues of systemic dimensions and implications. It will also investigate and report on allegations of additional incidents provided these allegations are reliable and tend to show that these incidents did occur in Somalia at the hands of members of Canadian forces.



Gilles Létourneau, Chairman of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

COMMISSION OF INQUIRY INTO THE DEPLOYMENT OF CANADIAN FORCES TO SOMALIA

Role of Commission Counsel

Counsel appointed to assist the Commissioners are the Commissioners' counsel and will conduct themselves with this in mind. Commission Counsel are subject to the direction of the Commissioners and, subject to the rights of other parties appearing before the Inquiry, Counsel act at the direction of the Commissioners for the purpose of assisting them. Commission Counsel will primarily assist by giving advice on evidentiary and procedural matters, by gathering evidence for the Commissioners, and by questioning witnesses at the Inquiry.

Commission Counsel also have the duty to advise the Commissioners on procedural matters. Commission Counsel are of the view that the rules of procedure which have been drafted will facilitate the orderly business of the Inquiry. Parties will have an opportunity to comment on those rules to Commission Counsel before the organizational hearing and to make submissions to the Commissioners with respect to the rules at that hearing. Commission Counsel will also advise on the various applications for standing and will communicate their position to each applicant for standing before the organizational hearing. All advice from Commission Counsel on procedural or evidentiary matters will be made public so that all parties have an opportunity to comment on it.

Prior to the hearings, Commission Counsel will review documents and interview witnesses. Witnesses will be provided with copies of documents which are relevant to their proposed evidence ahead of time. Witnesses are entitled to have their counsel present during any interview and interviews will be arranged through counsel if possible. Such interviews will be used to assist Commission Counsel in the collection of information and evidence.

Witnesses will be examined by Commission Counsel first and then cross-examined by the parties and finally by their own counsel, if any. Commission Counsel will then have an opportunity for re-examination. A party may apply for leave to call witnesses. The Commissioners may, in the interests of fairness, allow a witness to be examined first by his or her own counsel. If that is the case, then Commission Counsel will cross-examine the witness first, followed by counsel for the other parties and then counsel who called the witness will have an opportunity for re-examination.

At the close of the hearings, Commission Counsel will summarize the issues and the evidence for the Commissioners but will not make submissions regarding their views of the evidence or on the findings or recommendations which the Commissioners should make. Commission Counsel will not participate in the writing of the final report of the Commissioners.

All media requests concerning the Inquiry including those regarding procedures or legal issues should be directed to the Public and Media Relations Office.

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



CANADA

Commission d'enquête
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**Rules of Practice and Procedure applicable to the
Commission of Inquiry into the Deployment of
Canadian Forces to Somalia**

Short title

1. These Rules may be cited as the *Commission of Inquiry into the Deployment of Canadian Forces to Somalia Rules*.

Application

2. These Rules apply to the Commission established under Part I of the *Inquiries Act*, R.S.C. 1985, ch. I-11, pursuant to P.C. 1995-442, approved by His Excellency the Governor General on the 20th day of March, 1995.

Interpretation

3. In these Rules:

"Chairman" means the person appointed by the Governor in Council to be chairman of the Commission;

"Commission" means the *Commission of Inquiry into the Deployment of Canadian Forces to Somalia* established pursuant to P.C. 1995-442, approved by his Excellency the Governor General on the 20th day of March, 1995;

"Commissioner" means a person appointed by the Governor in Council to conduct the Inquiry;

"Commission Counsel" means Counsel appointed by the Commissioners to assist them in their Inquiry;

"Party or Parties" refers to those granted standing and is not intended to convey notions of an adversarial context;

Notice of Inquiry

4. Notice of the Inquiry and any hearings shall be served upon any person who, in the Commission's opinion, may have an interest in the Inquiry and, in addition, such notice shall be given by publication in Canadian newspapers or other publications as in the opinion of the Commission would be appropriate.

Standing

5. Commission Counsel, who will assist the Commission throughout the Inquiry and ensure the orderly conduct of that Inquiry, has full standing and, unless the Commission otherwise decides, will call and question all witnesses at hearings.

6. (1) Any person requesting standing to participate in the Inquiry shall make application by way of a written motion to the Commission.

(2) The motion shall be made in either official language and shall contain the following:

(a) the name, address and facsimile and telephone numbers of the applicant;

(b) whether the applicant has a general interest or a special interest in the Inquiry and the nature of such interest;

(c) the extent of standing desired, i.e., the right to call, examine or cross-examine witnesses or to make oral or written submissions;

(d) whether the evidence to be adduced will be factual or expert or opinion evidence. In the case of expert or opinion evidence, the applicant shall specify the special skills possessed by reason of experience or study which renders the witness particularly skilled on the topic on which evidence is to be given.

(3) The motion shall be supported by an affidavit of the applicant and accompanied by supporting material.

7. In granting an applicant the right to participate in the Inquiry, the Commission determines whether that party has full or limited standing.

8. A party who is granted full standing is entitled, in addition to the filing of written submissions, to examine or cross-examine witnesses and to make oral submissions subject to such terms as the Commission may direct. Such party may also be authorized to call witnesses.

9. A party who is granted limited standing is entitled to file written submissions and, if the Commission deems it necessary or expedient, to make oral submissions at a hearing following the filing of such written submissions.

Procedural Hearing

10. The Commission may hold procedural hearings for the purpose of determining what persons shall have standing and for the purpose of having Commission Counsel tender documentary or other evidence which Commission Counsel determines should be tendered in advance of the public hearings for the convenience of the Commission or persons entitled to be heard.

Public Hearings

11. (1) The Commission shall, from time to time, fix a time and place for hearings.

(2) The hearings shall be held in public subject to the right of the Commission to conduct the proceedings *in camera* where necessary to protect confidential information or information relating to national security or where the Commission considers it necessary to do so in the public interest.

(3) Where the Commission holds hearings *in camera*, it shall decide, in the circumstances of each case, who shall be permitted to attend and the conditions to be imposed upon any person permitted to attend.

Witnesses

12. Parties should provide to Commission Counsel the names and addresses of all witnesses they believe ought to be heard.

13. Commission Counsel has a discretion to decline to call witnesses whose evidence does not appear to them relevant or falls within an area which they intend to cover with other witnesses.

14. If a party believes that a person who has not been called by Commission Counsel has relevant evidence, the party may apply in writing to the Commission for an order to have that person called as a Commission witness. If the order is granted, Commission Counsel shall call that person.

15. A party may, on written application to the Commission, be authorized to call witnesses. It shall:

(a) state the reasons why it should be authorized to call witnesses, and;

(b) provide to the Commission and the other parties a summary of the anticipated evidence of each witness it intends to call.

16. (1) A Commissioner on application by a party may authorize the issue of a summons to compel the attendance of a witness before any hearing to give evidence and to produce documents.

(2) A request to issue a summons shall be made by written application to the Commission at least fifteen (15) days prior to the date fixed for the hearing at which it is intended to summon such witness.

(3) The application shall set out the name and address of the applicant and of the proposed witness and the reason why the summons is necessary.

(4) The applicant shall be advised of the Commissioner's decision, as to whether or not a summons should be issued, at least ten (10) days prior to the date fixed for the hearing at which such witness is to be called.

(5) The applicant whose request to issue a summons is granted shall arrange for service of such summons and pay to the witness such witness fees and conduct money as are prescribed in the Rules of the Federal Court.

17. The order of examination will be as follows:

- a) Commission Counsel will adduce the evidence from the witness. Parties granted full standing will then have an opportunity to cross-examine the witness;
- b) Counsel for a witness, regardless of whether or not Counsel is representing a party, will cross-examine last, unless Counsel has adduced the evidence of that witness in chief, in which case there will be a right to re-examine the witness; and

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- c) Commission Counsel may re-examine a witness who has been cross-examined and cross-examine a witness whose evidence has not been adduced in chief by Commission Counsel.
18. The Commission, in the absence of agreement between Counsel, will determine the order in which Counsel for the parties shall be entitled to cross-examine witnesses.

19. Witnesses will give their evidence under Oath or Affirmation. The Oath or Affirmation may be administered by:

- a) the Chairman of the Commission;
- b) the clerk of the Commission; or
- c) any other person authorized by the Chairman.

Documentary Evidence

20. For the purposes of these Rules, the term "documentary evidence" means any document, photograph, sound recording, video recording, computer disk or other means of recording information which may be relevant to the subject matter of the Inquiry.

21. Parties who have been authorized to call witnesses and who intend to do so shall, fifteen (15) days prior to the date on which they are scheduled to call such witness, file with the Inquiry a list of documentary evidence within their possession and which they intend to introduce into evidence at the Inquiry. Commission Counsel and parties shall be granted the opportunity to inspect such documentary evidence.

22. Originals of documentary evidence are to be provided to Commission Counsel upon request.

23. Documentary evidence received from a party, or from any other person, shall be treated as confidential by Commission Counsel unless and until it is made part of the public record as an exhibit. This Rule does not preclude Commission Counsel from disclosing a document:

- a) as part of the investigation into the subject matter of the Inquiry; or
- b) to a party or a proposed witness upon the giving of an undertaking that such documentary evidence will be used solely for the purposes of the Inquiry.

24. There shall be two lists of exhibits numbered consecutively. One for public sittings marked "P" and the other for sittings in camera marked "C".

25. Access to list "P" and its exhibits shall be open during daytime office hours in the presence of a Commission representative. Access to list "C" and its exhibits shall be restricted to those persons authorized by the Commission, in writing, to have access.

26. Commission Counsel will endeavour to provide in advance to both parties and witnesses the documentary evidence that will be referred to during the course of the hearing and that is relevant to that party's standing, or that witness's testimony.

27. A party who is aware of documentary evidence not provided by Commission Counsel shall bring this to the attention of Commission Counsel at the earliest possible opportunity.

28. If Commission Counsel decides that that documentary evidence is not relevant, such evidence may still be used in cross-examination of a witness. Before such evidence may be used for the purpose of cross-examination, a copy must be made available to all parties by the Counsel intending to use it.

Written Submissions

29. A party shall file seven (7) copies of a written memorandum with the Commission at least ten (10) days before that party is scheduled to deliver its oral submissions or in accordance with such Orders with respect to the filing of memoranda as the Commission may make.

30. Every memorandum shall show the name and address of the party filing it; if the memorandum is filed on behalf of the party by an attorney or solicitor, it shall show the name and business address of the attorney or solicitor.

31. Memoranda may be prepared in either official language.

32. Memoranda exceeding twenty (20) pages in length must be prefaced by a one-page summary.

33. Recommendations should be summarized at the end of the memorandum.

Media Coverage

34. Video taping and sound recording by not more than two, unobtrusively located cameras, using only the available room light, will be permitted when the hearing is in process.

35. The cameras shall be fixed in a convenient place during the hearing.

36. The video and sound recording shall be made available through a pooling arrangement to any other interested media organization.

37. One copy of the video and sound recording shall be made available to the Commission and shall become part of the record of proceedings of the Commission.

38. Video taping and sound recording in the hearing room by other media will be permitted prior to the commencement of the hearing each day and upon completion of the hearing each day. Otherwise, interviews shall be conducted outside of the hearing room.

39. Media personnel will be subject to the direction of the Commission at the hearing. Media personnel shall avoid any behaviour which might disrupt or detract from the process of the hearing. No interviews, movement of equipment or use of supplementary lighting such as television lights or electronic flashes shall be permitted in the hearing room while the hearing is in session.

40. No microphone or tape recorder shall be placed in the witness area, at the Counsel tables, or on the Commissioners' dais, except with the prior approval of the Commission.

41. The Commission shall retain the sole discretion to order that video or sound recording of the hearing proceedings cease if, in its opinion, it is in the public interest to do so.

42. If the Commission determines that it will be necessary to hold all or part of a hearing *in camera*, arrangements satisfactory to the Commission must be made to ensure that all sound and video recording devices are removed from the hearing room or deactivated.

Miscellaneous

43. These Rules may be amended from time to time by the Commission as it sees fit.

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44. Where any matter arises not otherwise provided for by these Rules, the practice and procedure shall, for that particular matter, be determined by the Commission by analogy to the provisions of these Rules.

45. The Commission may dispense with the requirements of these Rules where, in its opinion, it is in the interests of justice to do so.

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

SUPPLEMENTARY

RULES OF PRACTICE AND PROCEDURE

1. The purpose of these supplementary rules is to establish the procedures to be followed by the Commission during the phase of these hearings in which Section 13 Notice recipients have been invited to address the issues raised in such notices and to establish the procedures to be followed in receiving written and oral submissions.

2. Except where inconsistent with these Rules, the *Rules of Practice and Procedure applicable to the Commission of Inquiry into the Deployment of Canadian Forces to Somalia* also apply.

3. The Commissioners retain the discretion to permit a departure from these Supplementary Rules.

4. Section 13 Notice recipients seeking to adduce documentary evidence that has not already been filed as an exhibit shall provide copies of such documents to the Commission by 4:00 PM, Thursday, March 6, 1997.

5. Any documents produced pursuant to Rule 4 will be copied and distributed by

P O Box C P 1880, Station "B"/Succursale «B»
Ottawa, Canada K1P 5R5
(613)947-8181 Fax (613)947-8177

Commission staff to all persons who have received Section 13 Notices.

6. A recipient of a Section 13 Notice must file the Notice before examining or cross-examining any witness.
7. Testimony offered must be relevant and responsive to the issues raised in the Section 13 Notice.
8. Counsel adducing *viva voce* evidence shall proceed according to the normal rules governing the examination of one's own witness.
9. Counsel adducing *viva voce* evidence shall file with the Commission two clear days in advance of their scheduled commencement date the following:
 - i) *curriculum vitae*, where available, and "willsay" statements of witnesses;
 - ii) a list of all documents, by exhibit number and page, already filed as exhibits that each witness will make reference to; and
 - iii) a list of all documents produced and distributed pursuant to Rules 4 and 5 of these Supplementary Rules which each witness will be referred to.
10. "Willsay" statements, *curriculum vitae* and lists of exhibits to be referred to will be copied and distributed by the Commission staff to all recipients of Section 13 Notices.

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11. Counsel for the recipient of a Section 13 Notice may cross-examine any witnesses called in response to a Section 13 Notice if the witness has, in chief, addressed a matter that concerns or relates to a matter raised in his or her client's Section 13 Notice. Subject to Rule 12, cross-examination shall be limited to the issues raised in the Section 13 Notice to which the witness is responding.
12. Cross-examination relevant to issues that the witness has not addressed in chief will not be permitted except with leave of the Commissioners.
13. Notwithstanding Rules 27 and 28 of the *Commission of Inquiry into the Deployment of Canadian Forces to Somalia Rules*, new documents to be used for the purposes of cross-examination must also be made available to the recipients of Section 13 Notices and to the witness.
14. Applications to compel the attendance of witnesses shall be made to the Commissioners on or before Thursday, March 6, 1997 and shall include a statement in writing setting out:
 - i) the evidence it is expected the witness will give; and
 - ii) the need, if any, for a summons.The issuance of a summons does not relieve the person who obtained the summons from the provisions of Rule 9 of these Supplementary Rules.

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15. Rule 16(5) of the *Commission of Inquiry into the Deployment of Canadian Forces to Somalia Rules* does not apply to witnesses called on behalf of recipients of Section 13 Notices.

16. With leave of the Commissioners, counsel may file evidence of a person dealing with issues that are non-controversial in the form of an affidavit from that person. Any affidavit that counsel intends to tender must be provided to commission counsel on or before March 14, 1997. The Commissioners will hear and determine any application to cross-examine the witness on matters dealt with in the affidavit in accordance with Rules 11 and 12 of these Supplementary Rules.

17. The order of cross-examination will be determined by agreement. However, if no agreement can be reached, the order shall be fixed by the Commissioners. Commission counsel, if they choose to cross-examine, will do so last. Counsel calling the witness will have the right of re-examination.

18. The *Revised Guidelines for Written and Oral Submissions* are incorporated into and form part of these Supplementary Rules.

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



CANADA

Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

Revised Guidelines for Written and Oral Submissions

Written Submissions:

1. Only witnesses, parties and recipients of Section 13 notices may make written submissions. Subject to paragraph 13 (Written Submissions) of these Guidelines all written submissions form part of the public record of the Commission.
2. In their written submissions, recipients of section 13 notices should specifically address and confine themselves to the itemized matters set out in the letters they recently received providing additional specification and particularization of the matters set out in the notices. As stated in those letters, Commissioners in writing their final report will confine their remarks with regard to individual misconduct to the matters so specified.
3. Recipients of section 13 notices and parties with unlimited standing in their written submissions are at liberty to address any matter falling within the terms of reference on which they feel they are able to provide useful information, observations or advice.
4. Any party making a written submission should refrain in their submissions from addressing incidents and events that were not canvassed in the hearings of the Inquiry.
5. Government counsel may provide submissions on any institutional or systemic issue falling within the terms of reference.
6. Government counsel as representatives of individual recipients of section 13 notices should conform to the same standard on issues of individual misconduct as are detailed in paragraph 2, above.

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7. Government counsel, because of the special nature of their role before the Inquiry, may also provide written submissions on significant issues and events, including:

- a) the March 4th incident and its aftermath;
- b) the house search or clearing operation conducted by Col Labbé in Mogadishu;
- c) the 28 Jan 93 'O' group instructions by Lt Col Mathieu on the ROE's
- d) the alleged state of intoxication of Lt Col Mathieu and RSM Jardine on December 31st, 1992;
- e) the "case of champagne" allegations pertaining to Col Labbé;
- f) the conditions of detention of prisoners and allegations of mistreatment or humiliation of prisoners;
- g) the 1992 hazing video;
- h) the in-theatre video containing racist comments;
- i) negligent discharges of weapons;
- j) the Fall 92 disciplinary incidents at the Kyrenia Club and Algonquin Park;
- k) the alteration of Somalia-related documents and the change of RTQ's to MRL's in the fall of 1993 and the spring of 1994;
- l) the adequacy of steps taken by NDHQ to ensure proper compliance with the order for the production of documents issued by the Commission of Inquiry and the alleged attempted destruction of DGPA documents; and
- m) the role of SILT in assisting the Commission of Inquiry in obtaining in a timely and responsible manner all relevant information from DND.

8. Parties with limitations on their standing, such as Captain Rainville, Major Buonamici and Major Armstrong, should confine their submissions to the issues on which they have been granted standing. Captain Rainville should restrict his submissions to matters pertaining to his role and actions in the March 4th incident. Major Armstrong, should be limited to the March 4th incident and allegations of cover-up concerning that incident. Major Buonamici is also restricted to the March 4th incident but may also wish to address institutional and systemic issues pertaining to the proper deployment, use and independence of MP's. Other parties

having different limitations on their standing, such as the African Canadian Legal Clinic, Coalition of Somali Canadian Organizations, the Canadian Jewish Congress, B'nai Brith, and the Canadian Airborne Forces Association should confine their representations to the institutional or systemic issues specified in their grant of standing.

9. Witnesses making written submissions should confine themselves to matters pertaining directly to their role and actions in the events under investigation by the Commission of Inquiry and to the matters upon which they offered testimony before the Inquiry.

10. Any person tendering a submission is at liberty to provide that submission to any other party, section 13 notice recipient, or witness.

11. Submissions will not be formally served upon or exchanged with other parties, section 13 notice recipients or witnesses, except that, if any adverse comment is made about the conduct of any person, then a copy of the written submission must be provided to the affected person at the time of filing the written submission and the affected person may provide a written submission in reply.

12. Except as provided in paragraph 11, rebuttal submissions or submissions in reply are not contemplated under these guidelines.

13. Recipients of section 13 notices may file their written submissions confidentially with the Commission by stating this clearly on the face of the written submission. However, should they elect to file confidentially, they must still comply with the provisions of paragraph 11 and the affected person receiving the submission in accordance with paragraph 11 must treat the document confidentially. Any submissions in reply to a confidentially filed submission should also be confidentially filed with the Commission.

Oral Submissions:

1. Only parties and/or section 13 notice recipients may make oral submissions.
2. Oral submissions will be made in public in an open hearing before the Commissioners. Recipients of section 13 notices should be cognizant of the need to safeguard the confidentiality of their status as section 13 notice recipients, if they choose to make oral submissions.
3. Oral submissions will be time limited.
4. Parties having limited standing, such as the Coalition of Somali Canadian Organizations, the Canadian Jewish Congress, the B'nai Brith and the Canadian Airborne Forces Association should confine their representations to the institutional or systemic issues specified in their grant of standing.
5. Counsel representing the Government of Canada may address institutional or systemic issues in their oral submissions.
6. Captain Rainville, Major Armstrong and Major Buonamici should be restricted in their oral submissions to the matters provided for in paragraph 7 (Written Submissions), above.
7. Parties who have not received section 13 notices (other than those specified in paragraphs 4, 5, and 6, above) should confine their oral submissions to matters adduced in evidence and directly relating to them.
8. Save as provided for in paragraphs 4, 5, 6, and 7, above, oral submissions should be confined solely to issues of individual misconduct.

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

*In The Matter of an Inquiry Pursuant to Part I of the Inquiries Act, R.S.C. 1985,
c. I-11 into The Chain of Command System, Leadership Within the Chain of
Command, Discipline, Operations, Actions and Decisions of the Canadian Forces
and the Actions and Decisions of the Department of National Defence in Respect
of the Canadian Forces Deployment to Somalia and a Report Thereon*

TO: The Minister of National Defence

ORDER

Pursuant to the establishment of a Commission of Inquiry into the deployment of Canadian Forces to Somalia and in order to assist the Commission in planning its investigation and public hearings, the Department of National Defence and the Canadian Forces, ("DND/CF") are hereby required to file with the Commission, as soon as possible, and in any event not later than 30 days from the date hereof:

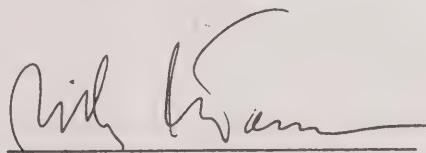
- a) A list, indicating date, title, short description, author and recipient of all the reports, studies or other documents, including photographs, sound recordings, video recordings, computer disks or other means of recording information, ("documents") relevant to the terms of reference, and that are in their possession or within their control, and without limiting the generality of the foregoing;
- b) Transcripts of all Courts Martial proceedings relating to the incidents which took place in Somalia on February 17, 1993, March 4, 1993, March 16, 1993, March 19, 1993 March 17, 1993 and May 3, 1993, ("the incidents"), if any;
- c) All military police or other investigative reports into the incidents which took place in Somalia;

- d) All reports, including military police investigations regarding disciplinary incidents in the Canadian Airborne Regiment or the Canadian Airborne Regiment Battle Group which took place prior to deployment to Somalia;
- e) The Hewson Report;
- f) The Somalia Working Group Impact Analysis Report to Senior Management on October 7, 1993;
- g) All briefings given to senior management within the DND/CF, the Minister's Office, Privy Council or Cabinet regarding the incidents in Somalia or the Courts Martial and other disciplinary actions taken as a result thereof;
- h) A list of the material among said documents that the DND/CF considers to contain confidential information, a clear identification of such confidential information, and the basis for claiming confidentiality;
- i) A list of all documents for which privilege is claimed, a description of the privileged information, and the basis on which privilege is claimed;
- j) Supplementary lists of documents as additional documents are prepared or brought to your attention;
- k) A list of the names, and status at the time, of all the persons who were part of the chain of command, including any changes, with respect to the Somalia operations under review by this Commission along with the name of the organization they belonged to at that time;
- l) An Organisational Chart representing the chain of command, including any changes, for the Somalia operations under review;
- m) A list of all persons who the DND/CF believe to have information relevant to the inquiry, indicating those for which a summary or a detailed statement or synopsis of information is available together with a list of any documents to which the individual may refer or upon

which he may rely, and a biographical note on the individual;

- n) A list of all persons who the DND/CF believe should be called as witnesses at the inquiry, indicating those for whom a "will say" statement, a summary or a detailed statement or synopsis of information is available together with a list of any documents to which the individual may refer or upon which he may rely, and a biographical note on the individual;
- o) The names of the potential witnesses whose testimony DND/CF believes should be heard in camera, whether in part or *in toto*, and the justification for so doing;
- p) A list of the names and status at the time of those members of the Canadian Airborne Regiment or Canadian Airborne Regiment Battle Group who were either involved in or accountable for the incidents in Somalia;
- q) A list of the names and status of the persons who reported or should have reported the incidents in Somalia, as well as the name and status of the persons to whom they reported or should have reported; and
- r) The name of contact persons for each list and, in case of a list of documents, indicate an accessible location where these documents can be inspected or obtained.

Dated at Ottawa, Ontario this 21st Day of April, 1995



The Honourable Gilles Létourneau
Chairman

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

Commissioners/Commissaires
The Hon./L'hon. Gilles Létourneau, Chairman/Président
Mr./M. Peter Desbarats, The Hon./L'hon. Robert C. Rutherford

Commission Secretary/Sectrétaire de la Commission
Mr./M^{me} Stanley A. Cohen

Counsel/Conseillers juridiques
Mr./M^{me} François Daviault, Ms./M^{me} Barbara McIsaac

*In The Matter of an Inquiry Pursuant to Part I of the Inquiries Act, R.S.C.
1985, c.I-11 into The Chain of Command System, Leadership Within the
Chain of Command, Discipline, Operations, Actions and Decisions of the
Canadian Forces and the Actions and Decisions of the Department of
National Defence in Respect of the Canadian Forces Deployment to
Somalia and Report Thereon.*

TO: Clerk of the Privy Council

ORDER

Pursuant to the establishment of a Commission of Inquiry into the deployment of Canadian Forces to Somalia and in order to assist the Commission in planning its investigation and public hearings, the Privy Council Office is hereby required to file with the Commission, as soon as possible, and in any event not later than 30 days from the date hereof:

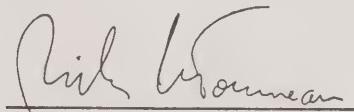
- a) A list, indicating date, title, short description, author and recipient of all the reports, studies or other documents, including photographs, sound recordings, video recordings, computer disks or other means of recording information, ("documents") relevant to the terms of reference, and that are in its possession or within its control, and without limiting the generality of the foregoing;
- b) All correspondence or internal documents, including briefings given to senior management within the Privy Council Office, the Prime Minister's Office or Cabinet regarding the incidents in Somalia or the Courts Martial and other disciplinary actions taken as a result thereof;

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(613) 947-8181 Fax: (613) 947-8177

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- c) A list of the material among said documents that the Privy Council Office considers to contain confidential information, a clear identification of such confidential information, and the basis for claiming confidentiality;
- d) A list of all documents for which privilege is claimed, a description of the privileged information, and the basis on which privilege is claimed;
- e) Supplementary lists of documents as additional documents are prepared or brought to your attention;
- f) The name of contact persons for each list and, in case of a list of documents, indicate an accessible location where these documents can be inspected or obtained.

Dated at Ottawa, Ontario this 18th Day of May, 1995



The Honourable Gilles Létourneau
Chairman

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

Commissioners/Commissaires
The Hon./L'hon. Gilles Létourneau, Chairman/Président
Mr./M. Peter Desbarats, The Hon./L'hon. Robert C. Rutherford

Commission Secretary/Sectaire de la Commission
Mr./M. Stanley A. Cohen

Counsel/Conseillers juridiques
Mr./M. François Daviault, Ms./M. Barbara McIsaac

*In The Matter of an Inquiry Pursuant to Part I of the Inquiries Act, R.S.C.
1985, c.I-11 into The Chain of Command System, Leadership Within
the Chain of Command, Discipline, Operations, Actions and Decisions of the
Canadian Forces and the Actions and Decisions of the Department of
National Defence in Respect of the Canadian Forces Deployment to
Somalia and Report Thereon.*

TO: Deputy Minister of Foreign Affairs

ORDER

Pursuant to the establishment of a Commission of Inquiry into the deployment of Canadian Forces to Somalia and in order to assist the Commission in planning its investigation and public hearings, the Department of Foreign Affairs is hereby required to file with the Commission, as soon as possible, and in any event not later than 30 days from the date hereof:

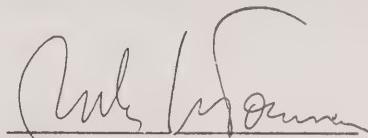
- a) A list, indicating date, title, short description, author and recipient of all the reports, studies or other documents, including photographs, sound recordings, video recordings, computer disks or other means of recording information, ("documents") relevant to the terms of reference, and that are in its possession or within its control, and without limiting the generality of the foregoing;
- b) All correspondence or internal documents, including briefings given to senior management within the Department of Foreign Affairs, the Minister's Office, Privy Council or Cabinet regarding the incidents in Somalia or the Courts Martial and other disciplinary actions taken as a result thereof;

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- c) All documents, including communications with the United Nations regarding Operations Cordon and Deliverance in Somalia and communications with the United States regarding UNITAF and UNISOM, relating to the deployment of Canadian troops in Somalia;
- d) A list setting out the names and addresses of all non-governmental organizations present and on the ground in Somalia at the time of the deployment of Canadian Forces;
- e) A list of the material among said documents that the Department of Foreign Affairs considers to contain confidential information, a clear identification of such confidential information, and the basis for claiming confidentiality;
- f) A list of all documents for which privilege is claimed, a description of the privileged information, and the basis on which privilege is claimed;
- g) Supplementary lists of documents as additional documents are prepared or brought to your attention;
- h) The name of contact persons for each list and, in case of a list of documents, indicate an accessible location where these documents can be inspected or obtained.

Dated at Ottawa, Ontario, this 18th Day of May, 1995



The Honourable Gilles Létourneau
Chairman

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

*In The Matter of an Inquiry Pursuant to Part I of the Inquiries Act,
R.S.C. 1985, c. I-11 into The Chain of Command System,
Leadership Within the Chain of Command, Discipline,
Operations, Actions and Decisions of the Canadian Forces
and the Actions and Decisions of the
Department of National Defence in Respect of the
Canadian Forces Deployment to Somalia and a Report Thereon*

TO: The Minister of National Defence

O R D E R

Pursuant to the establishment of a Commission of Inquiry into the deployment of Canadian Forces to Somalia and in order to assist the Commission in its investigation and public hearings, the Department of National Defence and the Canadian Forces are hereby required to file with the Commission, as soon as possible, and in any event not later than 48 hours of the date of service hereof, any documents pertaining to an alleged "Marc Lepine memorial dinner" and an alleged unauthorized discharge of firearms said to have occurred at a junior ranks mess at CFB Petawawa in December 1990, December 1991 and/or December 1992 (the "incidents"), and without limiting the generality of the foregoing:

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Ottawa, Canada K1P 5R5

- 2 -

- (a) All books, records of account, ledgers, schedules and other documents pertaining to any events at all messes or other locations at CFB Petawawa for the months of November and December 1990, 1991 and 1992;
- (b) Copies of any bills, posters, notices, advertisements and other documents pertaining to the incidents;
- (c) Copies of any lists of attendees and their respective ranks and documents tending to identify the organizer or organizers of the incidents;
- (d) Copies of all entries into the military police daily observation book (DOB entries) for November and December 1990, 1991 and 1992, copies of all military police investigation reports of the incidents and copies of any SIU intelligence files and/or investigation reports of the incidents.

Dated at the City of London, Ontario this 7th day of November, 1995

(Peter Desbarats)

Peter Desbarats
Commissioner

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

*In The Matter of an Inquiry Pursuant to Part I of the Inquiries Act,
R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership
Within the Chain of Command, Discipline, Operations, Actions and
Decisions of the Canadian Forces and the Actions and Decisions of the
Department of National Defence in Respect of the Canadian Forces
Deployment to Somalia and a Report Thereon*

TO: The Minister of National Defence

ORDER

Pursuant to the establishment of a Commission of Inquiry into the deployment of Canadian Forces to Somalia and in order to assist the Commission in its investigation and public hearings, the Department of National Defence and the Canadian Forces are hereby required to file with the Commission, as soon as possible, and in any event not later than 48 hours of the date hereof:

All records and documents, including memoranda, letters, notes, and documents in electronic format, (hereinafter "records"), which relate to:

- (a) the preparation of Responses to Queries (R.T.Q.'s), regarding the deployment of Canadian Forces to Somalia;
- (b) the decision to change the format of such records and re-name them;
- (c) the Order of this Commission for the production of records by the Canadian Forces and the Department of National Defence dated the 21st day of April 1995;

- (d) the order or direction from the Chief of Defence Staff to comply with such Order, any directions from the Somalia Investigation Liasion Team, (S.I.L.T.) regarding compliance with that Order; and,
- (e) in particular, and without limiting the generality of the foregoing, the compliance with that Order by the Director General of Public Affairs (DGPA), particularly in connection with the provision of copies of all Somalia related R.T.Q.'s or similar documents to SILT and to the Commission

Dated at the City of Ottawa, Ontario this 2nd day of April, 1996



The Honourable Gilles Létourneau
Commissioner

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



CANADA

Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

~~Commission of Inquiry into the
Deployment of Canadian Forces to Somalia~~

FILED

MAY 28 1996

UW

LINDA MARTEL
Registrar / Greffière
Commission d'enquête sur le
déploiement des Forces canadiennes en Somalie
Ottawa, Ontario

*In The Matter of an Inquiry Pursuant to Part I of the Inquiries Act,
R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership
Within the Chain of Command, Discipline, Operations, Actions and
Decisions of the Canadian Forces and the Actions and Decisions of the
Department of National Defence in Respect of the Canadian Forces
Deployment to Somalia and a Report Thereon*

TO: MINISTER OF NATIONAL DEFENCE
c/o COLONEL JEAN LECLERC
SOMALIA INQUIRY LIAISON TEAM (SILT)

WHEREAS the Commissioners have issued to the Department of National Defence an order to produce documents (which order contemplates information stored on computer disk or other means of recording information) dated April 21, 1995;

WHEREAS the Commissioners are mandated to investigate inter alia the effectiveness of decisions and actions taken by leadership at all levels of National Defence Headquarters in response to the operational, disciplinary and administrative problems encountered during the Somalia deployment;

WHEREAS the missing computer hard drives of the National Defence Operations Centre (N.D.O.C.) were located on April 4, 1996;

WHEREAS these computer hard drives of the N.D.O.C. contain information pertinent to the investigations of the commissioners;

WHEREAS information collected, depending upon its nature and how it is classified, could be placed on different data bases of the hard drives of N.D.O.C.;

WHEREAS the Commissioners are aware that some Somalia-related information collected can be classified as national security information;

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WHEREAS the Commissioners are mandated by their terms of reference to protect national security information and other classified information.

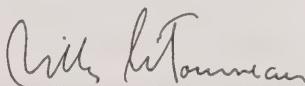
ORDER

THEREFORE, it is ordered that:

as regards the National Defence Operations Centre hard drives that were discovered on April 4, 1996 and examined thereafter by Military Police with the assistance of the RCMP, all data contained or stored therein be transferred or down-loaded to a CD ROM disk and the CD ROM disk produced thereby be transmitted to the Secretary of the Commission on or before May 31, 1996 at noon;

SILT and the Military Police take all proper measures to safeguard the server and the original computer hard drives of N.D.O.C. at a location to be provided to the Secretary of the Commission and that access be given to the Commissioners and their staff at all times.

DATED at Ottawa, Ontario, this 23nd day of May 1996



The Honourable Gilles Létourneau, Chairman

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, THURSDAY, MARCH 27, 1997

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
 Commissioners

Commission of Inquiry into the Deployment of Canadian Forces to Somalia	
F I L E D	MAR 27 1997
S. FRASER <i>SF</i>	
Registrar / Greffière	
Commission d'enquête sur le déploiement des Forces canadiennes en Somalie	

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon.

Appeared:

LIEUTENANT-GENERAL (Retired) GORDON M. REAY

Applicant

REASONS FOR ORDER

This is a motion by the applicant, Lieutenant-General (Retired) Gordon M. Reay, to the Commissioners for an order:

- a) That all further proceedings pursuant to Minute of the Committee of the Privy Council, dated March 20, 1995, being P.C. 1995-442, (the Somalia Inquiry), be immediately terminated without the completion and publication of any Reports;
- b) or alternatively, that the Section 13 Notice(s) issued to the Applicant be withdrawn and no adverse findings or findings of misconduct be made against the Applicant, directly or indirectly, by the Commissioners in any Report issued by them;
- c) for the provision of the particulars requested in a letter to Commission counsel Ian Stauffer dated February 26, 1997; and
- d) for such further or other ancillary relief as may appear just.

Counsel for the applicant raises a number of arguments in support of his motion. Only those that are relevant and probative will be addressed by the Commissioners.

With respect to the applicant's request that the Inquiry be shut down, it is obvious that counsel for the applicant misconceives the nature of the Inquiry and the powers of the Commissioners. In fact, the Commissioners are under a duty to report to the Governor in Council, in the public interest, at the end of their mandate and have no jurisdiction to decline to do so. Certainly, the applicant on his motion has presented no lawful basis for acceding to his request.

There is no merit in the applicant's argument that the Commissioners "cannot properly perform the mandate given to them" because the Government has truncated their mandate. What the Commissioners have said is that they cannot complete the whole of their mandate within the time-frame allocated, not that they cannot perform their mandate. As a matter of fact, they have completed fully their investigation with respect to the applicant's involvement in the pre-deployment phase which is self-contained and constitutes a large portion of their terms of reference. Insofar as the review of systemic and institutional questions is concerned, it should be noted that the Commissioners have received extensive oral and documentary evidence covering the three phases, i.e., pre-deployment, in-theatre and to a lesser extent post-deployment, and have, thereby, probed the great majority of matters assigned to them under the terms of reference. The Commissioners would be remiss in their duty if they were not to issue a report on the systemic and institutional problems encountered within the context of the Somalia mission after the hearing of 126 witnesses, over 183 days of sittings and the review of more than 150,000 pieces of documentary evidence. The pre-deployment phase itself which ran between October 2, 1995 and February 22, 1996 involved the reception of extensive testimony from 46 witnesses and included thousands of pieces of documentary evidence. The report of the Commissioners on the institutional and systemic problems revealed by the evidence embraces much more than the applicant's personal interest and is intended to serve the larger interests of the military institution and the Canadian public.

The applicant seeks as an alternative relief an order that the allegations of misconduct against him for his responsibility in the pre-deployment phase be withdrawn. There is no substance to his argument that the Commissioners must completely investigate

the events in-theatre before he could be made accountable for his alleged failures in the pre-deployment phase.

It appears clearly from the terms of reference given to the Commissioners that the pre-deployment phase is delineated in time, refers to specific powers and duties, and involves a specific chain of command which is in fact a different chain of command from the one that had responsibility for the in-theatre phase. In other words, for the purposes of this motion, the pre-deployment phase is autonomous. The applicant was under a misapprehension when he concluded that the Commissioners are endeavouring to determine a link between the applicant's conduct during the pre-deployment phase and the misconduct in Somalia of the Canadian Forces. With regard to the applicant, what the Commissioners are reviewing are his alleged shortcomings and failures in assuming his duties and exercising his authority prior to deployment. Such alleged failures or shortcomings can exist and be considered on their own terms. The alleged failures and shortcomings that are of concern to us relate to the applicant's exercise of authority in the period prior to 10 January 1993 as defined by the terms of reference.

Finally, there is also no merit whatsoever in the applicant's counsel's contention that his client has been treated unfairly because he has not been given particulars of his alleged shortcomings.

The Commissioners have endeavoured to be as fair as possible in their approach to the notices required under s. 13 of the *Inquiries Act*.

Anticipating that the applicant's behaviour could be subject to criticism for his role in the pre-deployment phase, the Commissioners informed the applicant on September 22, 1995, prior to the hearing of any evidence, that his leadership would be reviewed. The applicant was invited to participate in the hearings in person or by counsel. He chose to be and was represented by counsel for the Government of Canada throughout our proceedings until he was granted by the Commissioners on February 24, 1997 an order authorizing a substitution of counsel.

On January 31, 1997, the Commissioners particularized the allegations against the applicant on the basis of the evidence adduced before the Inquiry. The applicant was invited to make written submissions, including representations as to what necessary evidence

should be adduced in respect of the alleged shortcomings. An additional opportunity to make a concluding statement or submission to the Commissioners was offered to the applicant.

As a result, affected parties and individuals submitted, in February 1997, requests to adduce such evidence in the last phase of the Inquiry's hearings. Upon receiving their requests, the Commissioners assessed the necessity and utility of receiving the suggested evidence orally or, alternatively, of receiving it in written form by way of affidavit.

While fairness motivated the creation of the last rebuttal evidence phase of the Inquiry's proceedings there is no absolute entitlement to this kind of process devised by the Commissioners to govern this stage of their proceedings. Basic, substantial, fundamental procedural rights have been accorded to all parties and s. 13 notice recipients, including the applicant, before the Inquiry since the earliest days of its existence. These rights have included rights of standing, disclosure of documents, will-say statements as regards forthcoming witnesses, as well as the full opportunity to examine and cross-examine the over one hundred witnesses whose evidence has been received by the Commissioners.

Initially, most recipients of the Commissioners' invitation responded with lists of proposed witnesses or affiants. Taken cumulatively, the total number of witness requests was approximately one hundred and four (104) witnesses. (There were some overlapping requests, making the actual number of individuals named somewhat smaller than the number of requests.) This number compares with the one hundred and twenty six (126) witnesses heard over the entire life of the Commission of Inquiry. It was therefore obvious to the Commissioners, without a more persuasive justification, that a great many of these requests could not be accommodated. Beyond this, however, the Commissioners had requested that the parties and affected individuals justify their requests in terms of the necessity of calling the prospective witnesses. Many of the requests were accompanied by little or no justification, or by an insufficient rationale. These unjustified requests were refused.

Certain other factors also played a role in the paring down of the prospective witness lists that were submitted for the consideration of the Commissioners:

many of the prospective witnesses were indicated as having evidence to offer only pertaining to incidents or events that were not going to be addressed by the Commissioners in their hearings.

- ▶ many of the prospective witnesses had previously been called to testify before the Inquiry and the right to cross-examine the proposed witness was available and exercised by the requesting party or individual at that time.
- ▶ the parties or individuals submitting lists had already received the benefit of early disclosure and an indication of areas of possible concern, which was of assistance to them in preparing for evidence in the hearings as they unfolded.
- ▶ in addition to disclosure being made early in the process, it was copious, including hundreds of document books disclosed in advance of testimony and ultimately filed with the Inquiry.
- ▶ most were granted standing early in the process and had taken advantage of that status by attending the hearings on numerous days and availed themselves of the right to examine or cross-examine all relevant witnesses on numerous occasions.
- ▶ all were accorded the opportunity to testify.
- ▶ Commission counsel have been available throughout to discuss the nature and significance of the evidence disclosed and assist in determining what may be of use to them in their preparations.
- ▶ Commissioners have granted generous allowance to all parties to file written material in affidavit form.

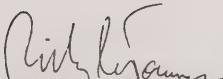
Upon individually considering each of the requests that were made the Commissioners decided to permit a number of witnesses to be called by the requesting parties to give oral testimony.

In addition, the Commissioners indicated to the requesting parties or individuals their preparedness to receive, in lieu of oral testimony, the evidence of witnesses in affidavit form. Our rules comprehend an ability in parties to tender affidavit evidence on non-controversial matters.

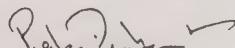
After receiving word of the Commissioners' decisions respecting their requests, a number of counsel have indicated their intention not to call evidence or submit affidavits in the last phase of the Inquiry's hearings, despite the fact that Commissioners had reserved time for these persons for this purpose. The Commissioners set aside approximately one month (over the last three weeks of March and the first week in April) to receive additional testimony to be called at the behest of the parties and affected individuals. The actual amount of time that would be consumed, however, was dependent upon the inclination of the parties to take advantage of the opportunity extended to them. The applicant is among those who have indicated that he does not wish to avail himself of this offered benefit. The applicant is entitled to make final oral submissions and, if he chooses to do so, these will be received by Commissioners on completion of the last rebuttal phase of our hearings, during the week of April 7th. The opportunity to forward written submissions to the Commission of Inquiry has already been extended to the applicant.

The applicant submits that he requested particulars in a letter of February 26, 1997 that he alleges was faxed to us. For some unknown reason, the letter never reached us. Once the breakdown in communication was realised by both parties, the Commissioners took immediate steps to ensure that particulars would be given to the applicant. The requested particulars were sent to his counsel on March 20, 1997.

For these reasons, this motion should be dismissed.



Gilles Létourneau,
Chairperson



Peter Desbarats,
Commissioner



Robert Rutherford,
Commissioner

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, MONDAY, JUNE 12, 1995

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
 Commissioners

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon.

Appeared:

HER MAJESTY THE QUEEN

Applicant

ORDER FOR SEVERANCE

The Commission orders that

- a) the information relating to the activities of another state mentioned at p. 360 (18-2) lines 53-57 of volume II, the maritime rules of engagement found at p. 2581 of volume VIII and the name of the intelligence source mentioned at p. 891 (64-2), in lines 13 and 23 of volume IV, be severed on the basis that these informations are irrelevant to the inquiry.
- b) the information on defence capabilities at p. 2203 (V-3/5), para. 5(b)(1) of volume VI, and at p. 101-7 to 101-11 of Exhibit #5 be severed on account of national security.
- c) the information describing the operating procedures used by the forces of an allied state found at p. 374 (20-3), lines 39-43 of volume II be severed on account of prejudice to international relations.

Gilles Létourneau, Chairman of the
Commission of Inquiry into the Deployment
of Canadian Forces to Somalia

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
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OTTAWA, MONDAY, JUNE 12, 1995

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
Commissioners

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon.

Appeared:

HER MAJESTY THE QUEEN

Applicant

REASONS FOR ORDER

This order relates to the filing, as exhibit P-20, of the Report made by an internal Board of Inquiry appointed under section 21.07 of *Queen's Regulations and Orders for the Canadian Forces* by the Chief of Defence Staff to investigate the leadership, discipline, operations, actions and procedures of the Canadian Airborne Regiment Battlegroup. The Board was established on the 28th of April 1993 and amendments were brought to its terms of reference on May 9, May 21 and July 2 of that same year.

The Board produced its voluminous report on July 19, 1993. The Report contained eleven (11) volumes of documentation consisting of 3,365 pages and fourteen (14) envelopes of exhibits. Volume 12 contains the response of the Chief of the Defence Staff to the Board's recommendations.

At the procedural hearing held by this Commission on May 24, 1995, counsel for the Crown objected to the filing of an unedited version of that Report, and therefore disclosure to the

public of certain portions of that document, on the basis that it contained, in a number of places, either information relating to national security or information, the release of which could affect Canada's good international relations. In this latter case, the rationale was that the material either was obtained from another State or an international organization (UN, NATO) under the seal of confidentiality and consent for its release, though sought, has not been obtained yet, or that it adversely commented on another State participant or member of the US-led coalition of forces deployed to Somalia. He asked that these passages be severed from the Report. On the whole, it originally represented some two hundred (200) pages. However, as a result of discussions with Commission counsel, a number of claims have been waived and the submissions are now in respect of six (6) extracts affecting only eight (8) pages.

It was agreed at the procedural hearing that counsel for the Crown would file, at the latest on June 2, 1995, written submissions in support of his objection to the public release of some portions of the Report. Furthermore, these submissions would be circulated to the other parties who were granted standing. These parties were then given until June 9 to file their answers, if any.

It was also agreed that references to the disputed material would be made in broad descriptive terms in order not to reveal its actual contents, but yet to enable parties to the inquiry to properly respond to the justifications submitted by counsel for the Crown.

The Terms of Reference

Under Rule 23 of our *Rules of Practice and Procedure (Rules of Practice and Procedure applicable to the Commission of Inquiry into the Deployment of Canadian Forces to Somalia)*, documentary evidence given to our Commission is treated as confidential until it is made part of the public record as an exhibit. This rule is designed to invite participation and full and frank disclosure. The Board of Inquiry's Report transmitted to our Commission is governed by that rule.

The terms of reference appointing this Commission require that information relating to national security be heard in-camera and kept confidential. In addition, the Commission has the power to protect the confidentiality of documents where it considers it necessary in the public interest. *Prima facie*, documents likely to prejudice the applicant's good international relations would appear to fall in this last category and call into play the exercise of that power by the Commission. In some cases, an argument can be made that the release of a document, because of its origin, its very contents and the circumstances under which it was obtained and released, not only will prejudice Canada's good international relations, but, by so doing, will also pose a threat to national security. However, potential prejudice to one's good international relations caused by the embarrassment associated with the public release of a document cannot and should not necessarily and systematically be equated with "threat to national security". Where for example, an opposition to the public release of an innocuous document is made on the basis that consent has not yet been obtained from the authority from which the document was received, it is hard to see how the release of that relevant document in the best public interest could compromise national security.

At the procedural hearing, the Commission formally reiterated its position in this matter: all information relevant to the public inquiry ought to be made public subject to the Commission's duty to protect information relating to national security. As for the use by the Commission of its residual or discretionary power under the terms of reference, the Commission will consider exempting relevant information from public scrutiny only where specific references and justifications are provided and these justifications raise a sufficiently serious concern to warrant rebutting the presumption that all matters should be made public.

Meaning of "National Security"

In the introduction of a Study prepared in 1979 for the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, Professor Martin Friedland stressed the absence of definition of "national security" and the extensive nature of the concept. He

refers to it as "a convenient way of describing a range of matters from "espionage" to "subversion", words which...turn out to be as vague as the concept of national security itself"¹.

It has been said that the concept cannot be defined but that, like obscenity, one knows it when one sees it². Abuses under the name of national security, witnessed in the United States and in Canada, would tend to show that the notion is quite variable and therefore not necessarily that easy to recognize when one sees it. Richard Barnet wrote:

"In the name of "national security", telephones are tapped, mail is opened, countries are invaded, American citizens are put under surveillance, Congress is deceived, the Secretary of State - perhaps even the President - is deceived, and, in the Nixon era, high crimes and misdemeanors were committed."³

The words "national security" are used in at least six federal statutes and four regulations and, at times, Parliament has preferred the terms "security of Canada". They are still undefined while the notion of threats to the security of Canada has been defined in the *Canadian Security Intelligence Service Act*⁴.

According to the statement made by the Solicitor General in 1978 before the House of Commons Standing Committee on Justice and Legal Affairs, national security refers to the protection of national sovereignty⁵. Basically, it relates to the protection of the security of the state

¹ M. Friedland, *National Security: The Legal Dimensions*, The Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, University of Toronto, 1979, p. 1.

² *Jacobellis v. Ohio* (1964) 378 U.S. 184, at p. 197 per Stewart J., referring to obscenity. See also the views of the U.K. Committee of Privy Counsellors on Ministerial Memoirs in 1976 where it is stated that national security is a vague idea but that when it comes to a practical issue, it is not usually difficult to agree the matter falls within or without the security net. See Friedland, *supra* at p. 1.

³ R.J. Barnet, Reflections: Rethinking National Strategy, *The New Yorker*, March 21, 1988, p. 104, at p. 197. See also *Goguen v. Gibson* [1983] 2 F.C. 463, at 479 (Fed. C.A.) Per Marceau J.A. discussing the concepts of immunity based on international relations or national security: "...the concepts involved in the formulation of an objection of that nature are so broad and so vague that, in practice, they leave much room for exaggerations and over-statements, not to mention clear abuses".

⁴ R.S.C. 1985, chap. C-23, s. 2.

⁵ Justice and Legal Affairs, Issue no. 34, June 1, 1978.

which means the protection of the territorial integrity of the state and the preservation, maintenance and protection of the democratic processes of government against illegal attempts to subvert those processes by violent means⁶.

Obviously, the concept of national security is contingent upon geopolitical, temporal and subjective viewpoints⁷. However, for the purposes of determining whether documents ought to be publicly released or not in the course of its inquiry, the Commission has given the notion of national security its basic meaning.

Balancing Competing Public Interests

The notion of public interest is by nature somewhat elusive. It has a fluid content depending on whether it is invoked in the criminal, administrative, civil, fiscal, economic, social or military context. Indeed, in the context of a criminal law provision relating to the release of an accused on bail pending trial, it has been found to be unconstitutional for vagueness as no workable meaning had been given to the term⁸. Yet, because the post-conviction context is not the same as the pre-trial context, the notion has passed constitutional muster and is one of the criteria for release on bail pending appeal⁹.

⁶ See *Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police*, First Report: *Security and Information*, 1980, p. 15.

⁷ See J.S. Russell, *National Security in Canada: A Critical Perspective of the State's Talisman*, LL.M. Thesis, University of Ottawa, Ottawa, pp. 11-12, where the author mentions that national security was almost exclusively associated with communism in the 1950s but came to be greatly expanded in the 1980s to include many critical ideologies of the political establishment. He mentions that some in the American "New Right" have argued that the conscription of women into armed forces active combat duty would constitute a threat to national security.

⁸ *R. v. Morales* [1992] 3 S.C.R. 711. In *R. v. Zundel* [1992] 2 R.C.S. 731, the minority pointed out that the term "public interest" is mentioned 224 times in 84 federal statutes.

⁹ *R. v. Farinacci* (1994) 25 C.R. (4th) 350 (Ont. C.A.).

In our context, i.e., a public inquiry designed to shed the light on regrettable events and restore public confidence in a fundamental institution of our democratic process, the notion of "public interest" requires that, except for limited and justifiable exceptions, all relevant material be publicly filed and analyzed so that the general public be fully apprised of the facts and, therefore, the ultimate purpose of the inquiry be attained. It is all the more important that the relevant pieces of information be publicly released as there are on-going allegations of cover-up at various levels of the military and political process which seriously undermine public confidence in their leaders. More secrecy can only lead to less public confidence in the system. As Lord Justice Salmon wrote in the report of the *Royal Commission on Tribunals of Inquiry*:

"When there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors. Investigations so conducted will always tend to promote the suspicion, however unjustified, that they are not being conducted sufficiently vigorously and thoroughly or that something is being hushed up. Publicity enables the public to see for itself how the investigation is being carried out and accordingly dispels suspicion. Unless these inquiries are held in public they are unlikely to achieve their main purpose, namely, that of restoring the confidence of the public in the integrity of our public life. And without this confidence no democracy can long survive."¹⁰

The Commission's decision requires a balancing of two competing interests within the notion of public interest: the need for secrecy in order to protect national security or Canada's good international relations and the need for openness in order to fully apprise the public as to the facts which could restore trust and confidence in the military institution. These competing interests do not exist in a vacuum or in isolation as a leading thinker and writer on the subject of balancing interests reminded us:

"Behind these interests we find concrete concerns of their holders, concerns connected for the most part with a surrounding field of further interests. This means that all the circumstances of a particular case must be considered, for it is only in the light of these surrounding circumstances that careful analysis can establish what interests on both sides are affected. Through this process, circumstances may acquire a weight which augments or diminishes the abstract value of a legal interest in a particular case. This may even go so far that a legal interest of a lower abstract rank is, in a concrete situation, found to be more worthy of protection than a higher-ranking interest. Consequently, when interests are weighed, it is not their abstract

¹⁰ Cmnd. 3121, 1966, par. 116, cited in *Re Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police*, (1978) 44 C.C.C. (2d) 200, at p. 214.

value which is the ultimate issue, but rather the extent to which they merit protection in a particular case."¹¹ (emphasis added)

Obviously, this balancing is required only if the information in issue is relevant to the inquiry. Where the information prejudicial to national security or to the applicant's good international relations has no bearing on the inquiry, it simply need not and should not be filed with the inquiry.

The Test Applied

In balancing the competing public interests raised by a claim based either on national security or good international relations, the Commission has adopted the test enunciated in section 38 of the *Canada Evidence Act* and developed by the Federal Court of Appeal in *Goguen v. Gibson*¹². A document will not be disclosed to the public if disclosure would likely be injurious to national security or international relations and if such injury would outweigh the importance and benefit of the disclosure to the public in the inquiry proceedings.

Applying these principles to the objection made by Counsel for the Crown, the Commission orders that

- a) the information relating to the activities of another state mentioned at p. 360 (18-2) lines 53-57 of volume II, the maritime rules of engagement found at p. 2581 of volume VIII and the name of the intelligence source mentioned at p. 891 (64-2), in lines 13 and 23 of volume IV, be severed on the basis that these informations are irrelevant to the inquiry.

- b) the information on defence capabilities at p. 2203 (V-3/5), para. 5(b)(1) of volume VI, and at p. 101-7 to 101-11 of Exhibit #5 be severed on account of national security.

¹¹ Theodor Lenckner, The Principle of Interest Balancing as a General Basis of Justification (1986), *Brigham Young University Law Review*, 645, at p. 651.

¹² [1983] 2 F.C. 463 (Fed. C.A.).

- c) the information describing the operating procedures used by the forces of an allied state found at p. 374 (20-3), lines 39-43 of volume II be severed on account of prejudice to international relations.

The Commission wishes to acknowledge the cooperation it received from counsel for the Crown and other participants in addressing these issues.



Gilles Léjourneau, Chairman of the
Commission of Inquiry into the Deployment
of Canadian Forces to Somalia

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, MONDAY, APRIL 29, 1996

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
 Commissioners

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon.

Appeared:

COMMANDER DOUGLAS I. CAIE

Applicant

REASONS FOR DECISION ON MOTION FOR DISCLOSURE

Counsel for Commander Caie has brought a motion before the Commissioners seeking to obtain disclosure of the transcript or tapes of Military Police witness interviews that formed the basis of the Military Police Report Summaries filed at the Commission's hearings.

This request by counsel for Commander Caie is based on a claim for procedural fairness. Under the law, procedural fairness is a fluid concept whose contents vary and depend, among other things, upon the nature of the proceedings in which it is invoked.

In the criminal law context where an accused faces a criminal charge and the prospect of leaving the court room at the end of the day wearing shackles, as Chief Justice Lamer once put it, procedural fairness requires full disclosure of the Crown's case. An accused's constitutional right to a full answer and defence is the legal foundation of his or her right to such disclosure. The extent of that right to disclose is conditioned not only by

the nature of the proceedings (for example criminal as opposed to civil proceedings) but also by the nature of the charges laid.

In *R. v. Stinchcombe* [1991] 3 S.C.R. 326, at p. 342 Sopinka J., speaking for the whole Court, reminded us that the general principles governing the Crown's obligation to disclose its evidence have been developed in the context of a prosecution for a criminal act and that some of the factors underlying these principles may not apply at all, or may apply with less impact, as, for example, where the prosecution is for a mere summary conviction offence. As the learned judge put it:

"in view of the number and variety of statutes which create such offences, consideration would have to be given as to where to draw the line".

Our inquiry, as we have repeated so many times, is not a criminal or a civil trial. There are no accused and no parties in the usual legal sense, only witnesses and interested participants whose function is to assist the inquiry in its search for the truth. Contrary to a trial, it is inquisitorial in nature and its purpose is generally to investigate and make recommendations with respect to public issues. No one will walk out of this hearing room under the distressing sight and sound of shackles.

Having said this, we hasten to note that procedural fairness is nonetheless an integral part of an inquiry process. However, the notion and more specifically its contents have to be analysed and developed in the procedural context of an inquiry on public issues as opposed to a trial of guilt or innocence.

Counsel for the Attorney General of Canada, Mr. Vita, contends that the Commissioners have no jurisdiction under the terms of reference constituting this inquiry to examine issues of cover-up which may have arisen in the post-deployment phase. Post-deployment issues are defined in the following terms by paragraph (s) of the terms of reference:

[The Commissioners shall inquire into] "the manner in which the chain of command of the Canadian Forces responded to the operational, disciplinary and administrative problems related to the Somalia deployment".

To understand the issues in dispute here, it is also necessary to understand that paragraph (k) of our terms of reference oblige us to investigate the issue of cover-up, at least insofar as it relates to the manner in which the Task Force discharged its responsibilities in-theatre.

Counsel for the Attorney General of Canada asserts that paragraph (s) leaves no scope for the Commissioners to inquire into aspects of cover-up which may have their genesis in-theatre and continue on into the post-deployment phase (and, indeed, potentially may be continuing up to the present moment). Mr. Vita does acknowledge the validity of the Commissioners engaging in what he hesitantly describes as the "ancillary" question of the sufficiency of the efforts made by the Department of National Defence to respond to the Commissioners various orders as to the production of documents but he asserts that, on grounds of relevance, the documents requested by the applicant ought not to be disclosed.

Our primary purpose in setting aside time at this juncture in our proceedings has been to assess the so-called ancillary issue of document production. This, however, is not an academic or theoretical issue. It is only with a proper appreciation of the document in question - with an appropriate understanding of the sufficiency or insufficiency of the disclosure that has been made to us - that we can confidently embark upon the in-theatre phase and appropriately explore the issues with the witnesses that we propose to call at that time. It is work that must be done before we proceed further. Document production in the present context involves issues of destruction and alteration - in other words issues of potential cover-up. In this sense, Mr. Vita's concession must extend into the very areas he suggests are off-limits to the Commissioners. Thus we are constrained to disagree with him even on the very narrow footing that he believes is appropriate to the disposition of this motion.

We, therefore, need not deal with the larger issue of the relation between paragraphs (s) and (k) of our terms of reference. Were it necessary to decide this question now we would incline to the view that cover-up is a continuing issue and that paragraph (s) is only fully comprehensible by reference to paragraph (k) and that therefore there would be clear authority for Commissioners to explore this issue independently from the "ancillary" question that we are now embarked upon.

Assuming, as we now do, that there is jurisdiction to disclose the material sought, what are its limits? The disclosure of tapes and transcripts, that we are now prepared to authorize, shall take the following form:

the videos and transcripts pertaining to the Military Police interviews of witnesses who are to be called by the Commissioners and that formed the basis of the Military Police Report Summaries filed at the Commission's hearings will be made available on a timely basis to counsel with standing and counsel who have been authorized to examine witnesses in this portion of our hearings, if they so request.

such transcripts will be made available where possible; if transcripts are unavailable, an opportunity to view or listen to the tapes on Commission premises for purposes of preparing for the hearings will be provided.

We believe that these aspects of the process that we have just outlined provide the degree of procedural fairness that is merited in the circumstances.

The representative of the Attorney General has asked for a stay of the decision until tomorrow while he seeks instructions from his client. This is a fair request and, accordingly, we have concluded that the decision will take effect on Tuesday, April 30, 1996 at 10:00 a.m. However, we reserve the Attorney General the right to apply to the Chairperson for an extension of the stay period before its expiry.

In the result, we are prepared to grant the Applicant's motion.



Gilles Létourneau, Chairman of the
Commission of Inquiry into the Deployment
of Canadian Forces to Somalia

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



CANADA

Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, THURSDAY, NOVEMBER 30, 1995

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
 Commissioners

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon.

Appeared:

LIEUTENANT COLONEL CAROL MATHIEU

Applicant

ORDER

This application for an adjournment of the proceedings and, in the alternative, for an Order declaring that the presence at the inquiry of L. Col. Kim Carter and her colleagues as representing the Department of National Defense and/or the Canadian Forces as well as Mr. Peter Vita, representing the Government of Canada and the Attorney General of Canada are in a conflict of interest prejudicial to the Applicant is dismissed.

Gilles Létourneau, Chairman of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, TUESDAY, MAY 7, 1996

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
 Commissioners

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon.

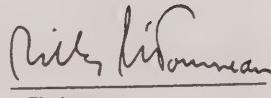
Appeared:

BRIGADIER-GENERAL ERNEST B. BENO

Applicant

ORDER

This motion for disqualification is dismissed.


Gilles Létourneau
Chairperson

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

OTTAWA, TUESDAY, MAY 7, 1996

CORAM: Gilles Létourneau
 Peter Desbarats
 Robert Rutherford
 Commissioners

In The Matter of an Inquiry Pursuant to Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 into The Chain of Command System, Leadership Within the Chain of Command, Discipline, Operations, Actions and Decisions of the Canadian Forces and the Actions and Decisions of the Department of National Defence in Respect of the Canadian Forces Deployment to Somalia and a Report Thereon.

Appeared:

BRIGADIER-GENERAL ERNEST B. BENO

Applicant

REASONS FOR ORDER DISMISSING APPLICANT'S MOTION FOR AN ORDER DISQUALIFYING THE CHAIRPERSON FROM CONTINUING TO ACT AS A COMMISSIONER FOR THE SAID INQUIRY OR, ALTERNATIVELY, DISQUALIFYING HIM FROM PARTICIPATING, IN ANY WAY, IN THE MAKING OF ADVERSE FINDINGS IN RELATION TO CHARGES OR ALLEGATIONS FORMING THE BASIS OF THE APPLICANT'S SECTION 13 NOTICE

Background

Counsel for Brigadier-General Beno has brought a motion to the Commissioners seeking an order disqualifying the Chairperson from continuing to act as a Commissioner for this Inquiry on the ground that he has, by his conduct, created a real apprehension of bias against the Applicant, who is a party with standing before this Inquiry. Alternatively, the Applicant seeks to have the Chairperson disqualified, for the purpose of the Inquiry and its final report, from participating in any way in the making of adverse findings, directly or indirectly, in relation to charges or allegations which are the subject matter of the section 13 notice given pursuant to the *Inquiries Act* R.S.C. (1985) c. I-11, and

issued to the Applicant, dated September 22, 1995. At the hearing convened in order to receive submissions on this motion, counsel for the Applicant stated that, if successful, he would be content with the alternative form of relief sought.

In support of his motion the Applicant has filed three affidavits (Mr. Frederic Mariage, dated March 26, 1996; Brigadier-General Meating, dated March 20, 1996; Brigadier-General Beno, dated March 28, 1996); a supplementary affidavit of Brigadier-General Meating dated April 2, 1996; a copy of the section 13 notice pertaining to Brigadier-General Beno (dated September 25, 1995); a transcript of a meeting with the Commissioners convened on February 12, 1996 at the behest of Brigadier-General Beno's counsel; and the audio-visual record of the evidence of Brigadier-General Beno given before the Inquiry on January 29-31, 1996. Also, filed by Commission Counsel for the purposes of this hearing, were two affidavits - one from Mr. G. Braun, an investigator for the Commission of Inquiry (dated April 15, 1996), and the other from Mr. Stanley A. Cohen, Secretary to the Commission (dated April 16, 1996). Mr. Cohen's affidavit contains, as an attachment, an advice memo disseminated by Colonel Leclerc of the Somalia Inquiry Liaison Team (SILT) reminding all individuals having anything to do with the Commission visits to Canadian bases that the discussions held were confidential and that no disclosure should be made of information concerning the individuals who participated in those discussions. Also attached as an exhibit to Mr. Cohen's affidavit with regard to this motion is an advice letter from Commission Counsel to the Applicant indicating that he will not be receiving a section 13 notice with respect to the in-theatre and post-deployment phases of our proceedings.

The motion was argued before the Commissioners on April 19, 1996. In addition to Commission Counsel, counsel for the Government of Canada, Lieutenant Colonel Morneau, Major Armstrong, and Major Buonamici all took the position that the matters of complaint did not give rise to a reasonable apprehension of bias and did not entitle the Applicant to the relief sought.

In support of his motion the Applicant alleges the following facts:

On 30 January 1996, on the second day of the Applicant's testimony (which lasted over two and one half days), the Chairperson intervened in the examination-in-chief of the Applicant, and, according to the submission of the Applicant, "attacked the witness in a direct way challenging to anyone watching it his credibility as a witness

and communicated to him in a direct way that [the Chairperson] didn't believe him". (Transcript of the February 12, 1996 meeting at p. 2);

On 6 February 1996 in Calgary, Alberta, in the course of a visit to the Calgary base and during a breakfast hosted by Brigadier-General Meating in response to comments from the Brigadier-General that he "perceived a bias in favour of L Col Morneau and his testimony during his time on the stand, as compared with the manner and tone of questioning [the Chairperson] had used with [the Applicant]", whom he contended had been treated in an "aggressive" manner by the Chairperson, the Chairperson is alleged to have stated that "it was his opinion and that of "other counsel" that BGen Beno had not given straight answers and that perhaps Beno had been trying to deceive". (Affidavit of Brigadier-General Robert Meating, dated March 20, 1996, para. 5(b));

At the conclusion of the same breakfast hosted by the Brigadier-General, the Chairperson, at the invitation of Brigadier-General Meating, was introduced to Major General Frederic Mariage (retired), who in conversation with the Chairperson, expressed his concern as to the "aggressive" manner in which the Chairperson had questioned the Applicant during his testimony. In response the Chairperson is alleged to have said that the Applicant, in giving his testimony, was "...very tense.. he seemed to be hiding things.. he didn't seem to want to cooperate with the Commission" and left Mr. Mariage with the impression that he believed that the Applicant "did not want to tell the truth during his testimony". (Affidavit of Frederic Mariage, dated March 26, 1996, paras. 2 and 3);

On March 20, 1996, the Chairperson telephoned Brigadier-General Meating with regard to an attempt by lawyers to discover the names of those who had been with him during his trip to Calgary on February 6, 1996, and warned him that no one should be giving out the names of those who had been spoken to by himself, his fellow Commissioners and investigators. He is also said to have reminded Brigadier-General Meating of the confidentiality of this information as well as of the confidentiality of what had been discussed by the Brigadier-General with the Chairperson. The Chairperson also is alleged to have indicated that "everyone in the chain of command would be reminded about the need for confidentiality in the very near future, by a message that was being sent by NDHQ" and that Brigadier-General Meating "will be receiving this warning soon". The Brigadier-General asserts that

"this was the first occasion that I had heard from Commissioner Letourneau, or anyone else, that my conversations with him were confidential and he gave no reason for his suggestion that they were". (Supplementary affidavit of Brigadier-General Robert Meating, dated April 2, 1996, paras. 3(f) and (g))

Certain other factors not stressed or alluded to by the Applicant in argument before us also have a bearing on the validity or legitimacy of the Applicant's submissions. These are:

The breakfast meeting with Brigadier-General Meating was convened at his invitation in the context of a visit to meet with soldiers to discuss their possible eventual participation in our Inquiry. (See, affidavit of Brigadier-General Robert Meating, dated March 20, 1996, para. 2.) The purpose of these visits to the bases was to explain to these soldiers the process and the objectives of the Inquiry, to reassure them of the Commission's good faith, and to offer protection to them from any intimidation, harassment or reprisals that they might fear from their colleagues or the chain of command as a result of cooperating with the Commission in its endeavours.

The introduction of the Chairperson to Major General Mariage (retired) took place on the initiative and at the insistence of Brigadier-General Meating. (See, affidavit of Brigadier-General Robert Meating, dated March 20, 1996, para. 6; and the affidavit of Inspector G. Braun, dated April 15, 1996, para. 8.) At no time did Brigadier-General Meating indicate that Mr. Mariage wished to meet the Chairperson so as to discuss the evidence given by the Applicant and express concern over the "aggressive" treatment of the Applicant during his testimony. The introduction and the events in question took place in the Calgary base dining room. The Chairperson had been conveyed to this locale to meet with Brigadier-General Meating despite the fact his host was aware that the Chairperson had already eaten breakfast at his hotel. (See, affidavit of Brigadier-General Robert Meating, dated March 20, 1996, para. 5.) Mr. Mariage, who resides in Montreal, happened to be present in the same Calgary base dining room at this exact moment, and coincidentally wished to engage the Chairperson in conversation on the very same subject (i.e. the treatment of the Applicant) as had been raised that same morning by Brigadier-General Meating.

Counsel for the Applicant requested a private meeting with Commissioners to discuss the fact that on January 30, 1996 the Chairperson attacked, in a direct way, the credibility of Brigadier-General Beno and expressed disbelief. He wished to discuss as well the February 6, 1996 conversation between the Chairperson and Major General Mariage (retired). This meeting was held on February 12, 1996. (See transcript of meeting of February 12, 1996.) In this meeting, which occurred at a point in time after the conversations with Brigadier-General Meating and Major General Mariage had occurred, Counsel for the Applicant expressly indicated that he was not of the view that events had then reached the point where there existed an impression of predisposition such that it would be disabling¹.

The conversation of March 20, 1996 between the Chairperson and Brigadier-General Meating took place before the Commissioners had received any indication that a formal motion for disqualification would be brought by the Applicant.

The need for confidentiality with regard to all aspects of the Commissioners' contacts with soldiers had been outlined both in the Commission's formal hearings as well as in the formal remarks made by the Chairperson in his address to the troops at each of the bases. The purpose of this speech was known to Brigadier-General Meating, who had travelled to Edmonton to meet the Commissioners on their initial visit to that Alberta base. (See, affidavit of Brigadier-General Robert Meating, dated March 20, 1996, para.2.)

¹ This is what the transcript of that meeting reveals (at pp. 20-21):

MR. COHEN: ... Now, you dangled I think a very heavy kind of insinuation about whether the Chair should think about whether he is capable of carrying on if he's unable to rid himself of some predisposition.

... I think it's unfair to leave the impression that we've reached a point where there is an impression of predisposition such that it should be disabling. I don't know whether you were making it any more overt than that.

MR. CARR-HARRIS: I'm simply asking the Chair to consider that himself and I'm making no —

MR. SCOTT: Surely he would, surely he would consider that. If we're wrong, you'll ignore us.

MR. COHEN: I take it that if you're serious about concerns of that nature, that's something you'll put on the record at the Commission of Inquiry if you really feel you have to come to that conclusion.

You are not at that point now, otherwise we wouldn't be sitting here; is that correct?

MR. CARR-HARRIS: That's right. We are at the point where we are raising this with the Chair at this point privately because it is a serious concern, that's all, and we're asking him to consider it.

In argument before us, counsel for the Applicant has contended that the Applicant's version of events, as disclosed in the various affidavits filed by him, stands uncontradicted. He was strongly challenged on this point at the hearing (notably by Mr. Vanveen, counsel for Major Armstrong who identified numerous points of contradiction in the material filed, including some of the material filed by the Applicant himself). In point of fact, the Applicant's views are contradicted as regards several material particulars, including a specific denials by the Chairperson of the content of what is alleged to have been said between Mr. Mariage and himself, and the length of that conversation insofar as it related to the concerns raised by the Applicant. Also, as Mr. Vanveen has established at the hearing of this motion, the transcript of the meeting of February 12, 1996, assessed objectively challenges the assertion of the Applicant that the Chairperson's reaction to the Applicant's concerns was "not constructive"². Moreover, the affidavits filed by the Commission's investigator and its Secretary also reveal important points contradicting the Applicant's position. These points, as well as others, will be alluded to in the ensuing discussion.

The Role and Status of Commissioners

Only with a proper appreciation of the role and responsibilities of commissioners is it possible to properly assess, in context, the allegations of bias that the Applicant now raises.

Contrary to a trial which is an adversarial procedure, a Commission of Inquiry is inquisitorial in nature and the powers of investigation are vested in the Commissioners themselves. This means that the issues are not, as in a trial, defined, submitted and controlled by the parties. Unlike a trial at which the trier of fact plays a passive role, Commissioners in an Inquiry are expected to take an active part in the investigation. Indeed, they are the investigators who hold the power to investigate. Although it is common for them to seek assistance from others because of the magnitude of the work generally involved, they are the ones who possess the power to examine and cross-examine the witnesses. Commission counsel and any other member of the staff who assist the Commissioners in

² See the transcript of the hearing on April 19, 1996, vol. 57, p. 11336 to 11346.

their investigation merely exercise delegated authority on behalf of the Commissioners³. In an Inquiry where Commission counsel have been instructed to be and remain neutral in their presentation of the evidence, it is more likely that the Commissioners themselves, when the circumstances warrant, will conduct a forceful cross-examination of a witness.

The Applicable Law

It is an irony, but also a logical and procedural necessity in cases such as this, that an application alleging bias against a tribunal or one of its members must at first instance be brought before the very tribunal or individual against whom bias is alleged. In this case the Applicant does not allege bias against the entire three person panel before whom he appears, but only as regards one of its members.

The rule against bias, commonly referred to as the second principle of natural justice, is founded on the Latin maxim, *nemo judex in sua causa debet esse*, meaning no one

³ This point was made clear by the Chief Justice of the British Columbia Supreme Court in the case of *Greyeyes v. British Columbia*, (1993) 78 B.C.L.R.(2d) 80. At pp. 87-88 of the decision, he wrote:

"It is common, where a judge is appointed a commissioner under the Inquiry Act, to refer to the proceeding as a "judicial inquiry". The term is potentially misleading insofar as it implies that an inquiry conducted by a commissioner who is by occupation a judge is somehow different in kind from one conducted by someone who is not a judge. A commission of inquiry, whoever conducts it, is not a judicial proceeding in the same sense as a trial. There is often a preference for appointing a judge to be a commissioner that may rest upon a recognition that judges are likely to be free of any connection with whatever organizations or groups of people are involved in the issue at which the inquiry is directed, and that judicial experience may give an advantage in conducting hearings. But a commissioner while acting as such is not a judge, although the Inquiry Act confers on him the same immunity from suit as a judge, and some of the powers of a judge. Unlike judges, commissions do not sit to hear both sides and determine an issue between parties. Their purpose generally is to investigate and make recommendations with respect to public issues, often highly controversial and emotionally charged. In the nature of things, commissioners often cannot perform their function with that degree of impartiality which is inherent in the role of a judge. It is not uncommon for them to start with a view that there is a problem to be investigated and solved, and to thus approach the task with a degree of seeming partiality which would be unacceptable in a judge conducting a trial."

A similar perspective is offered by the Chief Justice of the Québec Superior Court in *Bisaillon c. Keable* [1980] C.S. 13 at p. 28:

"Il importe d'ailleurs de rappeler - quoiqu'il ne faille pas voir une invitation à la licence - qu'un commissaire enquêteur n'est pas exactement dans la même situation qu'un juge présidant une cour de justice.

Le juge est l'arbitre impartial d'une procédure contradictoire engagée entre les parties à un litige.

Le commissaire préside à une procédure inquisitoriale. Tout en respectant les droits fondamentaux de la personne, il a mandat d'enquêter. Soit personnellement, soit par avocat, il doit poursuivre activement la recherche de la vérité. Il peut arriver qu'il paraîsse adopter une attitude préconçue: c'est qu'il cherche dans une certaine direction, mais le lendemain ses détracteurs le louangeront quand il fera porter ses efforts, tout aussi légitimement, en direction opposée. Dans un cas comme dans l'autre, le commissaire enquêteur remplit son mandat de "découvrir la vérité... par tous les moyens légaux qu'il juge les meilleurs"."

shall be the judge in their own cause. The underlying policy of the principle is common to all principles of natural justice: justice must not only be done, but must be seen to be done.

It is well-settled, at least with respect to judicial proceedings, that the appropriate question to ask when seeking to determine whether the rule against bias has been breached, is whether there is, as regards a party, a reasonable apprehension of bias on the part of the decision maker. In order to substantiate a charge of bias, there is no need to demonstrate actual bias. All that need be shown is that a reasonable apprehension of bias exists⁴. It is clearly arguable, in view of the case law to date, that a contextual approach should govern and that the test to be applied to Commissions of Inquiry should be flexible and responsive to the function performed and the facts in the particular circumstances of each case⁵.

In the circumstances of this application, we have been content to assess the Applicant's claim on the basis of a test regarding bias that is closer to that which would apply to courts and other adjudicative bodies. We have done so recognizing that there are other factors that militate against the application of the rigorous standard that we have chosen to employ in the present circumstances, including, the particular procedural and evidentiary rules for commissions of Inquiry and how such rules distinguish inquiries from the rules applicable to judicial proceedings; for example, the active role of the Commissioner within the proceedings as contrasted with the more passive role of a judge, and the more relaxed evidentiary rules that are employed in the inquiry process.

⁴ A recent formulation of the test is found in the Supreme Court case of *NFLD Telephone v. NFLD (Public Utilities Bd)* [1992] 1 S.C.R. 623. The test is thus formulated at p. 636:

"The duty to act fairly includes the duty to provide procedural fairness to the parties. That simply cannot exist if the adjudicator is biased. It is of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result the courts have taken the position that an unbiased appearance is in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator."

⁵ The context within which commissioners exercise their authority is well-described in *Greyeyes v. British Columbia*, *supra* note 2, where Esson CJSC states at page 88:

"In the nature of things, commissioners often cannot perform their function with the degree of impartiality which is inherent in the role of a judge. It is not uncommon for them to start with a view that there is a problem to be investigated and solved and to thus approach the task with a degree of seeming partiality which would be unacceptable in a judge conducting a trial."

The Facts and Circumstances in Issue and the Response Thereto

Even if one were to completely accept the fairness and the accuracy of what is described in the affidavits filed by the Applicant, which we cannot, what is disclosed does not meet the requirements of a demonstration of bias, whether apprehended or actual.

Brigadier-General Beno's concerns

The Applicant has stated in his affidavit that he feels that his possible future testimony and his role as regards the matters before the Inquiry "will not be assessed with impartiality by the Commission Chairman, who has formed an adverse opinion of my credibility to the point where he is expressing it openly to my professional colleagues". As the record depicts, the Chairperson experienced some difficulty understanding some aspects of Brigadier-General Beno's testimony before the Inquiry. He attempted to alleviate this difficulty by putting questions to him that would allow him to provide a better or more complete explanation or allow for modification of his original responses⁶. Nevertheless, on one occasion, even after such probing, the Chairperson found that he was still unable to reconcile certain inconsistencies in the General's testimony and he bluntly conveyed that fact

⁶ The Chairperson sought clarification as to a) the timeliness of the corrective measures proposed to remedy the weaknesses of the training plan prepared by the Commanding Officer (tr. 7769-71); b) rumours of slippage (tr. 7736, 7756) which could have affected the calendar of events; c) the purpose of Stalwart Providence Exercise with respect to leadership (tr. 7806); d) the propriety for any officer in the Armed Forces to question subordinates about their superior (tr. 7835-36); e) the troops' perception if their Commanding Officer went on a Recce platoon in-theatre (tr. 7848); f) General Beno's unequivocal denunciation of the use of improper criteria for the selection of a replacement to Colonel Moreault (tr. 7892); g) discipline, problem soldiers, and the role of a leader and Brigade Commander in solving disciplinary problems (tr. 7908-12, 7921-23, 7933-36, 7952-53, 8048-49, 8137-38) and for declaring a unit operationally ready (tr. 8149-51, 8244); and h) the purpose of the "Warning Procedure" found in CFAO-26-21 (tr. 8263).

to him at the time⁷. It was the Chairperson's hope that his interventions would sensitize the

⁷ The Chairperson's difficulty and that of others with respect to the subject of the Applicant's complaint can be made more concrete by reference to the record of his testimony:

The Chairperson asked the Applicant whether he had recommended to Colonel Morneau and Mathieu not to bring Major Seward, Major MacKay, Captain Rainville and Master Warrant Officer Vienneau. He flatly denied ever recommending anything of the kind as it appears at pp. 7925-26 of the transcript of the hearing on January 30, 1996:

Q. In terms of the state of discipline at the time of deployment --

THE CHAIRMAN: Just before you do. So when we see in this briefing for CDS that Brigadier-General Beno recommended to Colonel Morneau and Mathieu not to bring specifically Major Seward, Major MacKay, Captain Rainville and Master Warrant Officer Vienneau, you say that this is wrong? You never recommended anything of the kind? (Emphasis added)

BRIGADIER-GENERAL BENO: Sir, I would not -- that is correct. That is wrong.

Later at pp. 7941-42 of the transcript, he admitted in response to a question by Commissioner Desbarats that he had made such a recommendation to Colonel Mathieu, but not to Colonel Morneau:

COMMISSIONER DESBARATS: Right. But he hasn't found these people guilty of anything, he's just making an administrative decision not to send them.

BRIGADIER-GENERAL BENO: Sir, he has the powers to do both the disciplinary matters and the administrative matters. He may decide to leave people behind for administrative matters. Not only may he do so, he was advised to do so and he was advised to move people around and you may -- and you will see in one of the documents where I specifically advised Colonel Mathieu what I would do and, again, without taking -- pushing him aside and taking over his command, I told him how I would move about 25 people at different rank levels within the unit, in addition to leaving personnel behind.

THE CHAIRMAN: But I thought you just said that you did not advise the commanding officers about leaving people behind or moving them around. I asked you the question a few minutes ago and I said -- and I read an excerpt of this briefing to the commanding officer saying that you recommended or commanded, advised -- recommended to Lieutenant-Colonel Morneau and Mathieu not to bring specifically, and so on and on, and you said that you hadn't done that.

BRIGADIER-GENERAL BENO: Sir, I said I had not told Colonel Morneau to do that. You asked me the question, had I advised Colonel Morneau and Colonel Mathieu --

THE CHAIRMAN: No, but I read from here --

BRIGADIER-GENERAL BENO: Yes, sir, and I did not --

THE CHAIRMAN: Lieutenant-Colonel Morneau and Mathieu, and you said no. Now you say that you've done that with Lieutenant-Colonel Mathieu. (Emphasis added)

BRIGADIER-GENERAL BENO: I did, sir. I answered -- your question was, you read me what was there, I answered it, sir, respectfully, and the answer to that question was no. Did I advise Colonel Mathieu the answer to that question, if I were asked, is absolutely yes. (Emphasis added)

THE CHAIRMAN: I might as well tell you that you won't gain much by fiddling around. It was a clear question and you won't gain much --

Finally at p. 7996 of the transcript, after more probing of the issue, again by Commissioner Desbarats, the Applicant admitted having also spoken to Colonel Morneau about Major Seward, Major MacKay and Captain Rainville:

COMMISSIONER DESBARATS: Right, okay. So the second section of the list --

BRIGADIER-GENERAL BENO: Yes. Would you like me to start?

COMMISSIONER DESBARATS: Yes.

BRIGADIER-GENERAL BENO: Okay. It is indeed true that I spoke to Colonel Morneau about Major Seward, Major MacKay and Captain Rainville, and Colonel Morneau and I discussed them, and my questions about -- let me deal with the senior of them, Major MacKay. (Emphasis added)

witness to his concerns and that the witness would modify his approach accordingly. It is a matter of judgement conditioned by facts and circumstances, but a presiding officer in an inquiry setting is at liberty to confront a witness by questions or comments in an attempt to achieve greater clarity or candour from him or her. To do so does not suggest predisposition⁸.

The Chairperson was not the only one to experience difficulty with and confusion regarding the witness' testimony. The record reveals numerous questions probing inconsistencies from Commissioner Desbarats (often on the very same issue)⁹, attempts at clarification by Commission Counsel, Mr. Stauffer¹⁰, as well as cross-examination in the same vein by Mr. Vita (on behalf of the Attorney General of Canada)¹¹, and Mr. Shoniker (on behalf of General MacKenzie)¹².

⁸ On the contrary, it is only fair to a witness against whom a finding of misconduct might be made at the end of the proceedings that he be confronted with his contradictions and inconsistencies although no such obligation exists on the decision-maker. The witness is then given an early opportunity to explain these to the satisfaction of the trier of fact and avoid the prejudice associated with an adverse finding. From the point of view of the administration of justice, it is also, whenever possible, a safe course of action to follow. It prevents, subsequently, the making of allegations of unfairness against the decision-maker and it reduces the possibility of litigation concerning an adverse finding based on a claim by the witness that the so-called unexplained contradictions and inconsistencies which support the finding would have vanished if the witness were put on notice and given the opportunity to explain them: See the case of *Gracielome v. Canada (Minister of Employment and Immigration et al.)* (1989) 9 Imm. L.R. (2d) 237, at p. 239 where Hugessen J.A., of the Federal Court of Appeal set aside the decision of the Immigration Appeal Board. The Court of Appeal found that the applicants had not been confronted with the alleged contradictions or asked for explanations by the Immigration Appeal Board. In these circumstances, the Court of Appeal, before whom explanations for the alleged contradictions were given, found itself in as good a position as the Board to weigh such contradictions. See also, *Re Hurd et al. v. Hewett et al.* (1994) 20 O.R. (3d) 639 (Ont. C.A.) and *Ponnappalam v. Canada (Minister of Employment and Immigration)* (1994) F.C.J. No. 1981, where, in the context of a Refugee Board hearing, it was held that concerns regarding a witness's credibility should have been drawn to his attention and an opportunity to respond provided; and to like effect see *Jallal v. Canada (Minister of Employment and Immigration)* [1994] F.C.J. No. 684; *Santizo v. Canada (Minister of Employment and Immigration)* [1994] F.C.J. No. 567.

⁹ Commissioner Desbarats sought clarification from the applicant on numerous issues, including training (tr. 7738-40, 7765-66, 7799-7802); operational readiness (tr. 7813); his personal perception of the Commanding Officer's attitude (tr. 7746); the Commanding Officer's lack of priorities (tr. 7768-70); discipline (tr. 7927-28, 7936-40, 7943-44, 7988-8002); the soundness of his judgement, including the propriety for an officer of the Armed Forces to question subordinates about their superiors (tr. 7837-39), and the advisability for the applicant of sending someone else on the Recce platoon instead of the Commanding Officer (tr. 7845-48); racism within the brigade (tr. 8131-35); and, the applicant's own After Action Report on the Somalia mission (tr. 8231-35). Also of great relevance to the issues raised on this application were his questions relating to the list of people to be moved around or left behind and the recommendations made to Lt. Colonel Morneau and Lt. Colonel Mathieu (tr. 7936-40, 7943-44, 7988-8002).

¹⁰ See transcript at pp. 7945-52 where Commission counsel also sought to clarify from the applicant the issues relating to the list of people to be left behind or moved around.

¹¹ Counsel for the Attorney General sought to clarify again the issues relating to the list of people to be moved around and left behind and the recommendations made by the applicant to Lt. Colonel Morneau and Lt. Colonel Mathieu (tr. 8051-54, 8058-62).

¹² Mr. Shoniker revisited and sought clarification of the issue of the lack of integrity of the Commanding Officer alleged by the applicant (see p. 8073 of the transcript) as well as the nature of the recommendations made to Lt. Colonel Morneau and Lt. Colonel Mathieu with respect to those people to be left behind (see p. 8087 of the transcript).

The allegations against the Chairperson pertain first to the actions of the Chairperson during the examination of the Applicant, wherein it is alleged that his actions were inappropriate in that the Chairperson interrupted an examination of the Applicant by Commission Counsel and, in the course of subsequent examination by Commissioner Desbarats on the same issue, suggested that the Applicant was "fiddling around".

Applying the test referred to above, would a reasonably informed bystander reasonably perceive bias in the remarks of the Chairperson? It is difficult - more probably impossible - to conceive how the Applicant's bias challenge could be sustained solely on the basis of the conduct of the Chairperson within the hearings. The Applicant's counsel, in the hearing before us on the motion for disqualification, conceded as much. His position was that these exchanges were not sufficient in themselves to give rise to an apprehension of bias but rather were "in aggravation" of the situation revealed by the subsequent visit to the Calgary base and the telephone conversation of March 20, 1996.

The conversations with Brigadier-General Meating and Major General Mariage (retired)

As the transcribed record of the private meeting of February 12, 1996 reveals the Chairperson certainly recalls the very brief conversation with Major General Mariage (retired) taking place. He also acknowledges the fact that both Major General Mariage and Brigadier-General Meating individually and privately engaged him, to his discomfort, on the subject of the testimony and treatment of Brigadier-General Beno. However, to the extent that their versions of events portray him as stating more to them in informal conversation than he had expressed to Brigadier-General Beno directly while he was under oath and testifying, they are in error. This is borne out by the transcript of February 12, 1996 which presents the Chairperson's recollection as regards the conversation with Mr. Mariage. To this is added the affidavit of the Commission Investigator, Mr. Braun, which describes the attempt by the Chairperson to explain to Brigadier-General Meating the inquiry process and the need for him on occasion to ask questions of witnesses. While clearly the circumstances did not permit the use of precisely the same words as used in the Commission hearings, the Chairperson was alive to the sensitivity of what these individuals were discussing, and did not embellish upon or go beyond what the public record discloses of his views on this subject.

As noted, counsel for the Applicant has conceded that what was stated in the Commission hearings taken together with what was discussed with Mr. Mariage did not in themselves give rise to a disabling condition of bias or predisposition. Therefore, to sufficiently alter the state of affairs that prompted the meeting of February 12, 1996 (where no such bias was thought to exist) and to bring matters to the point of raising a reasonable apprehension of bias, the two conversations with General Meating set out in the material filed must disclose a new dimension to these events. On close analysis, they fail to do so.

From what has transpired, it is now clear that colleagues and friends of General Beno have sought an audience with the Chairperson in a misguided effort to, in some way, intercede on his behalf.

Brigadier-General Meating is, in a certain sense, a soldier and officer like all other soldiers and officers with whom Commissioners were to meet. Therefore, what he had to say to the Chairperson in the course of a private meeting was treated with the same respect and pledge of confidentiality as was to pertain to all Commission contacts with soldiers and officers on these visits to Canadian bases. As with all of the soldiers with whom Commissioners were to meet, the Chairperson was anxious to have his trust and enlist his assistance in our endeavours. The Brigadier-General's affidavit of March 20, 1996 indicates that he was alive to this orientation and, in it, he states his belief that the purpose of the Commissioners' visit was "to invite anyone with information that might aid the Commission's task to speak to the Commissioners in confidence". With this reality in mind, one must conclude that Brigadier General Meating was speaking to the Chairperson about General Beno as he did on February 6, as an individual with "information that might aid the Commission's task". In so doing, he was accepting the invitation of the Commissioners to speak to them "in confidence". Through his words and actions, he led the Chairperson to believe that this was also his understanding and orientation. Naturally, the Chairperson was uncomfortable with the General's attempts to engage him on the subject of the evidence that the Commission had received and the Chairperson's perceptions of it, but the Chairperson permitted the General greater latitude than would be extended to an individual who was legally trained and alive to the issue of attempting to influence a tribunal officer. However, at no time were any views or impressions expressed that were not already part of the official, public record. The Chairperson's responses to Brigadier-General Meating were designed to explain how the inquiry process works and to put an end to this part of the conversation, rather than extend it.

The same is true of the conversation with Mr. Mariage. The Chairperson was introduced to this retired General by Brigadier-General Meating for the ostensible reason that Mr. Mariage was a retired Francophone general from the Chairperson's native province who had been pursuing a varied and interesting career. In fact, as the material filed on this motion now indicates, a different motivation underlay this introduction. The Chairperson was unaware that General Mariage had engineered this introduction so as to make representations concerning Brigadier-General Beno's testimony and treatment. (See Affidavit of Frederic Mariage, dated March 26, 1996, para. 2.) Once again, this behaviour was treated as innocent misjudgement rather than a deliberate attempt at influencing a tribunal. Once again, no more was said about this testimony than already appears on the public record.

Counsel for the Applicant now maintains that the comments of the Chairperson to the Applicant's colleagues is the determining factor in assessing whether there exists a reasonable apprehension of bias in the Applicant as a result of the Chairperson's actions.

In this respect, when applying the applicable test to the conduct of the Chairperson, consideration must be given to the peculiar circumstances under which the conduct occurred and as well the overall context within which a Commission of Inquiry operates.

Contrary to what is alleged by Counsel for the Applicant, specifically, the allegations that the Chairperson defamed the Applicant to his professional colleagues, the evidence discloses several quite different things: first, that the comments made outside the hearing were addressed to the Applicant's two colleagues in private circumstances only after the issue of the Applicant's evidence had been raised in conversation by the Applicant's colleagues independently of one another.

Mr. Vanveen in his submission on this motion, described the encounter in Calgary in this way:

"So I don't think it's an overstatement at all to say that the Commission Chairman was accosted by these two gentlemen who each had a point they wanted to make on behalf of General Beno." (transcript p. 11328)

Mr. Lunau, on behalf of Lieutenant Colonel Morneau, also remarked on these events stating that, in his view, it was "quite astounding that a senior serving member of the

Canadian Forces would confront the Chairman of a public inquiry into the Canadian Forces with accusations of favouritism and bias in his handling of witnesses" and describing this behaviour as "provocative conduct, to say the least." (transcript p. 11360)

Second, what was said by the Chairperson was in direct response made by way of terse and limited explanation of the Inquiry process to the Applicant's colleague who raised the issue.

Third, as regards the content of the remarks that were alleged to have been made to Brigadier-General Meating and Major General Mariage (retired), even as set out in the affidavits filed, they are not significantly different than what was stated during the evidentiary hearings with respect to the Chairperson's recorded response on the subject of the Applicant's credibility. Moreover, as the Chairperson stated at the private meeting held on February 12, 1996, he categorically denies having said anything to Mr. Mariage that went beyond what the public record in this matter reveals¹³. The same holds true for his conversation with Brigadier-General Meating¹⁴. The remarks in issue were made in private conversations, in answer to direct criticisms forcefully levelled against the Chairperson, in his own defence, and purely by way of reactive explanation. Furthermore, these were conversations engaged in the context of a Commissioner conducting an investigation and were not those of a judge in the course of a trial. In light of all this, while the remarks that the Applicant's colleagues provoked from the Chairperson may not be agreeable to the Applicant in the circumstances, they would not, in a reasonable person, give rise to a reasonable apprehension of bias. An informed person, viewing the matter realistically and practically, would conclude that the Commission's proceedings, as they affect the Applicant, would be conducted with fairness and impartiality.

Far from presenting circumstances prompting an apprehension of bias or providing a reasonable basis for concluding that an apprehension of bias exists, the Applicant, through the information supplied, has revealed an attempt by high ranking members of the military to exploit their position of privileged access to the Inquiry Chairperson for the purpose of attempting to influence his assessment of the evidence that had been presented to the Commission of Inquiry.

¹³ See transcript at p. 12.

¹⁴ In this regard see the affidavit filed of Mr. G. Braun, Commission Investigator (dated April 15, 1996).

The subsequent telephone conversation with Brigadier-General Meating

The supplementary affidavit of Brigadier-General Meating, filed by the Applicant, has little to do with the issue of bias. It serves only to blacken the picture that the Applicant seeks to present and distorts the reality of the March 20, 1996 telephone communication between Brigadier-General Meating and the Chairperson. As the affidavit of the Commission Secretary makes clear, his call to Colonel Leclerc of SILT and the Chairperson's of the same day and hour to Brigadier-General Meating were inspired by the urgency of a possible attempt by others to breach the pledge of confidentiality which Commissioners had given to soldiers with whom they had met. At the base meetings Commissioners had undertaken to safeguard the identities of those with whom they met and protect the contents of their conversations with them. The memorandum distributed by Colonel Leclerc essentially corroborates this view of the nature of the concerns that were prevalent in the mind of the Chairperson on March 20, 1996. Thus, there is nothing in the events of March 20, 1996 that gives rise to a reasonable apprehension of bias.

Conclusion and Disposition

The Applicant has chosen to pursue this motion as the vehicle for rectifying and remedying what he perceives as a certain unfairness as regards the assessment of his role and status in our proceedings.

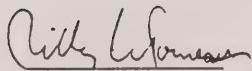
As was stated to counsel for the Applicant during the private meeting with Commissioners convened at his request, findings concerning the Applicant's credibility or any determination as to whether adverse commentary should be made against him will not be made until all of the evidence that is to be called over the entire range of events that this Commission has been asked to investigate has been heard. Findings that may reveal individual failings will be based solely and scrupulously upon the evidence that has been formally disclosed to these individuals and received in our hearings. All such holdings, it need scarcely be stated, will be the findings and conclusions of the Commission as a whole - not those of any single member of it. Also, it should be stated, no member of this Commission has had any prior knowledge of or ulterior, personal interest in Brigadier-General Beno. His evidence and his role in the events that transpired will be assessed solely in terms of what has been disclosed on the public record.

For the reasons given, we believe that the Applicant is mistaken in his contention that there exists a reasonable apprehension of bias. Such valid concerns as he may have regarding the completeness of the picture presented in these hearings and the fairness of its depiction of him can be addressed in other ways. Our process is such that the Applicant will be accorded other opportunities for correcting any misapprehensions he feels that we, as Commissioners, may have as regards his evidence or the issues affecting him. He may have other opportunities to testify. (However, his role, at this point, does not appear to be a large or controversial one insofar as it relates to the in-theatre and post-deployment phases of our endeavours. Indeed, as the material filed on this motion discloses, the Applicant has already received an advice letter from Commission Counsel that he will not be receiving a section 13 notice with respect to the in-theatre phase of our proceedings.) He will also, like all parties affected by these proceedings, be given an opportunity at the conclusion of our evidentiary hearings to make submissions and suggest that other evidence be brought forward that may be germane to any findings or conclusions that the Commissioners may make. Given these avenues that are available to him, it is therefore difficult to envision any conceivable prejudice that the Applicant may ultimately suffer in the forthcoming phases of the Commission's proceedings.

One additional observation on the matter of final submissions is merited. Final submissions, whether at the conclusion of a trial or upon the completion of proceedings, represents an occasion for counsel to "set the record right" and present a client's perspective in the strongest and most favourable light possible. This opportunity has not been lost. It awaits Brigadier-General Beno and his counsel. A tribunal does not reach its conclusions until such submissions have been received. Nothing that has been heard or received to date in our proceedings has been set in stone. Indeed, what may have appeared important at an early stage of the process may, in the end, turn out to be less significant, or pale in comparison with more fundamental matters revealed by the process. Our minds remain open and there is much terrain yet to be traversed before we reach the point of final submissions.

In the result, the Applicant's motion for an order disqualifying the Chairperson from continuing to act as a Commissioner of this Inquiry or, alternatively, disqualifying him from inquiring into, investigating, or participating in any way in the making of adverse findings, directly or indirectly, in relation to charges or allegations which are the subject

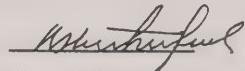
matter of a notice issued to the Applicant pursuant to section 13 of the *Inquiries Act* R.S.C. (1985) c.I-11, dated September 22,1995, should be dismissed.



Chairperson



Commissioner



Commissioner

OPENING STATEMENT

I wish to welcome everyone present to this first public hearing of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia.

For the record, I would like to identify other members of the Commission. The Secretary of the Commission is Mr. Stanley A. Cohen and Counsel for the Commission are Mr. François Daviault and Ms. Barbara McIsaac. The Registrar or clerk for this hearing is Ms. Linda Martel and the usher is Mr. Denis Vézina. We are thankful to the Federal Court of Canada for having acceded to our request for assistance.

Mr. Cohen is the Secretary of the Commission. He has served for seven years on the Law Reform Commission of Canada while I was there and has been instrumental in the publication of many Reports to Parliament and Working Papers over that period of time. He has an enviable number of publications to his credit and, in addition to his administrative functions, he will be responsible for the supervision of the writing of the Final Report of our Commission. Mr. Cohen worked with the Human Rights Law Section in the Department of Justice prior to being seconded at the Commission at my request.

Mr. Daviault who is Senior Commission Counsel is a senior partner in a very reputable Montreal legal firm. Yarosky, Daviault, La Haye, Stober and Isaacs. He has a wide experience in litigation and in this kind of Inquiry.

Ms. McIsaac is also a very experienced litigator with a very good knowledge of the public service and its functioning. She is a member of the legal firm, McCarthy, Tétrault. She worked a number of years in the Litigation Section of the Department of Justice.

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We are pleased that both of them have been able to accept their appointment and provide their expertise to this Commission.

The Commission will also be assisted throughout by a technical advisor and some researchers with military background and experience.

Brigadier General James Simpson (retired) who has had a distinguished career in the Canadian Forces will act as technical advisor. He was Judge Advocate General when he retired from the Forces in 1976. He went to work full-time for the United Nations at the U.N. Headquarters in New York and at the U.N. Offices in Vienna. In 1990, he was part of a U.N. Mission to South Africa to inquire into the extent that apartheid was being dismantled. In 1992, he worked for the U.N. Relief and Works Agency for Palestinian Refugees. His work within the U.N. has been qualified by the Deputy to the Under-Secretary-General as "at all times outstanding in both quantity and quality". In relation to the South Africa Mission, the Under-Secretary-General for Special Political Questions, in a letter sent to Mr. Simpson, wrote: "I should like to place on record my high appreciation of the personal role which you played, coupled with your high degrees of integrity and professionalism".

Mr. Simpson has had no involvement in the Somalia Operation and he will bring his expertise in the military field to the Commission.

Lieutenant-Colonel François Lareau (retired) will also assist the Commission. In addition to his military background and knowledge, Mr. Lareau possesses an interesting experience in research and policy-making which will be valuable in the writing of the report.

It is still early in the process and it is quite possible that other technical advisors will be added to the Commission staff as the needs evolve.

This Commission of Inquiry has been established to provide information to the public on all aspects of the Deployment of Canadian Forces to Somalia. The Inquiry was established in order to discover and bring into the open the true facts regarding what has transpired. It was established to favour access to the truth or information that the public has a right to know, understand and appreciate.

It is a public Inquiry and it is therefore of the greatest importance that the proceedings be held in public. Those who cannot attend the proceedings, and this is the majority of Canadians, are entitled to be kept informed as to what is taking place. This is why the Commission has taken steps to ensure that the hearings will be televised and to facilitate the work of the members of the media by providing a permanent media room next to the Inquiry Hearing Room equipped with phones, faxes and computer facilities. In addition, measures will be taken to ensure that members of the media will be provided with a copy of the daily transcripts of the proceedings which shall be made available to them in the media room during the course of the hearings of this Inquiry.

The Inquiry will be an examination of the joint planning, structuring and execution by the Canadian Armed Forces and the Department of National Defence of the Somalia Operation. It will review actions and decisions for the purpose of determining whether structural and organizational deficiencies may have led to the controversial incidents involving Canadian soldiers in Somalia. It will also review the institutional reaction and response to these incidents. The Inquiry's mandate includes proposing appropriate corrective measures for future missions. The Inquiry is not a trial, nor is it a retrial of any trial that has already been held, although its hearings will include an institutional examination of the

causes of and responses to incidents that have previously resulted in the charge and trial of individuals. In the same way, the inquiry is not an examination or re-examination of the issue of compensation to the victims.

I would like to repeat in French for the benefit of our francophone participants and public the purpose of the inquiry.

La Commission d'enquête examinera la planification, l'organisation et l'exécution communes par les Forces armées canadiennes et le ministère de la Défense nationale de ce que l'on a quelquefois désigné sous le nom *d'Opération Somalie*. Il s'agit d'un examen des mesures et des décisions prises, lequel vise à déterminer si des faiblesses structurelles et organisationnelles peuvent avoir entraîné les incidents controversés auxquels ont été mêlés des soldats canadiens en Somalie. Il s'agit également d'un examen des réactions des autorités à ces incidents. La Commission d'enquête a aussi pour mandat de proposer les mesures correctives appropriées pour les missions qui seront organisées dans l'avenir. La Commission d'enquête n'est ni un procès, ni une révision des procès qui ont déjà eu lieu, même si l'on examinera durant les audiences les causes institutionnelles des incidents ayant déjà mené à l'inculpation et au procès de certaines personnes, ainsi que, comme je l'ai déjà mentionné, les réactions des autorités à ces incidents. De même, la Commission d'enquête ne se veut pas un examen ou un re-examen du droit des victimes à une indemnisation.

Anyone who believes that he or she can assist the Commission in its mandate by providing relevant information should either write to the Commission or contact Commission Counsel, Mr. Daviault or Ms. McIsaac at the Commission Office who can be approached in confidence. Toute personne qui croit détenir de l'information pertinente à

l'enquête peut écrire à la Commission ou contacter les procureurs de la Commission en toute confidentialité.

Today's hearings are essentially procedural hearings that we have convened in order to establish rules of procedure and determine who will have standing before the Commission, that is to say who will be participants in each of the public hearings.

These initial hearings will be followed by policy hearings scheduled for the week of June 19th, at which parties or interested groups will be invited to submit their views or develop their written briefs with respect to matters such as (i) the adequacy or inadequacy of laws, regulations, policies or standards governing the establishment, organization or execution of the Somalia deployment or the deployment of military or peacekeeping forces generally; (ii) the institutional causes, if any, of inadequate political or military decision-making or accountability; (iii) proposals for change, the rationales, and the interests they are designed to promote and protect; or (iv) any other matter of policy relevant to the issues this Commission is directed to consider. Briefs and submissions of this nature will be of value and assistance to the Commission in defining the scope of its mandate and determining the shape of its research program. These hearings will be particularly helpful to the Commission as regards those aspects of the mandate which require an assessment of the professional values and attitudes in the Canadian Joint Task Force Somalia, the extent to which cultural differences may have affected the conduct of the operations , and the effectiveness of the decisions and actions taken at all levels of the chain of command.

Ces audiences de la Commission destinées à la présentation de mémoires et points de vue portant notamment sur les politiques, lois et règlements qui prévalent au sein des Forces armées en matière de responsabilité militaire, de non discrimination ou qui avaient trait à l'organisation et au déroulement de la mission en Somalie assisteront

grandement la Commission dans l'exécution de son mandat. Il en va de même pour ce qui est des règles relatives à la chaîne de commandement à l'intérieur des Forces canadiennes.

In the coming months, we will continue to study the voluminous documentation that these events have produced and undertake our own investigation and research. Starting in August, at a date and location to be later confirmed but most likely the week of August 28th, the Inquiry will, at hearings at which witnesses will be called, proceed to examine the various stages of the Somalia Operation. We are still looking for a convenient hearing room which could offer the facilities previously mentioned. The Commission will seek to ascertain the facts as they happened with a view to determining whether institutional or structural deficiencies existed in the chain of command, in the planning and execution of the operation, and whether the institutional responses to the operational, disciplinary and administrative problems in the course of the operation were adequate. The Commission will also review the allegations of cover up and destruction of evidence in order to determine whether they are well founded.

We want to emphasize that this fact-finding process will be conducted openly and in a non-adversarial manner. The Inquiry is a search for the truth and the reasons for what has transpired and that search will be pursued with due regard for procedural fairness and fundamental justice.

In this context, the Commission has summarized the role of its Counsel and copies have been distributed to the applicants for standing and the media.

In a nutshell, the role of Commission Counsel is to assist and advise the Commissioners in their conduct of the Inquiry, whether it be on substantive or procedural issues like the ones this morning. Commission Counsel will not participate in the writing of

the final report. In addition, in order to ensure their neutrality, they will, at the close of the hearings, summarize the issues for the benefit of all participants and the public, but they will not make submissions regarding their views of the evidence or on the findings or recommendations which the Commission should make.

Although today's hearings are procedural hearings, the Commission has asked Counsel to table and place on the public record at this time information that we believe is relevant to the public interest and this Inquiry and ought to be in the public domain.

Some documents are quite lengthy and have created logistical problems. We have developed a policy of public consultation and access to documents filed at hearings or publicly recorded which is as follows:

- a) documentary evidence filed with the Commission in preparation for a hearing or filed as an exhibit at a hearing will be available for public consultation on the Commission's premises at 171 Slater Street, 11th Floor, Ottawa.
- b) a copy of such documents will be at the disposition of the participants and members of the media in the hearing room and in the media room.
- c) additional copies can be obtained upon the payment of a minimal fee fixed at .15/page.
- d) especially in cases of lengthy documents, computerized disks could be obtained at costs or the person interested in getting the information need only provide the Commission with a disk on which the information will be transferred from the Commission's computer.

The Commission hopes that these measures will facilitate the work of the participants and any other interested persons in the Inquiry. The measures are amenable to whatever adjustments may be necessary to ensure that the objective of adequately informing the public and conveniently assisting the parties is met.

We have, today, a number of applications for standing with Counsel for the applicant being present in most instances. According to the Rules of Practice to be finalized later on today or tomorrow, the status of participants to the Inquiry will vary from the right to make written and oral submissions to the right to examine or cross-examine witnesses and, in some limited cases, the right to call witnesses. We should add that as a general rule and a matter of policy, all witnesses will be called and examined by Commission Counsel and then cross-examined by the other participants. In cases where a witness is first examined by his Counsel, that witness will be, thereafter, cross-examined by Commission Counsel and the other participants.

The Commission wants to make it clear that the issue of standing remains an on-going one in the sense that new applications may be made at a later stage or that changing conditions or circumstances may warrant applications to modify an existing status.

I will, in a moment, ask the Registrar to call the applicants and their Counsel and invite them to make their submissions. But before I do that, I would ask Commission Counsel if they wish to add something for the record and invite them to officially file documents with the Inquiry.

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

Opening Statement at the Policy Hearings

held on the week of June 19, 1995

On behalf of the Commission, I wish to welcome those who are present in this room or listening to these proceedings to a week of submissions on policy issues relevant to our Inquiry.

Purpose of the Hearings

In the course of the week, participants at the Inquiry will expose and review some of the policies, regulations, rules and practices applicable in the Canadian Armed Forces prior to and after the Somalia operation.

More precisely, they will compare notions of peacekeeping with peacemaking, examine the role of the United Nations in this regard, explore the meaning of leadership and the means of securing and developing leadership, discuss the rules of engagement for soldiers on peacekeeping or peacemaking missions, the rules of military accountability and in particular the functioning of the chain of command, the rules and practices in matters of recruitment, training and cross-cultural sensitivities or racism, the role and function of military police in the context of a mission or deployment, some principles of military justice, to name but a few of the issues that will be canvassed in the course of these hearings.

We can expect a critical review of these policies, rules and regulations pointing to some shortcomings, gaps, loopholes or structural deficiencies which either diminish their effectiveness or compromise the pursuit of the objectives they are designed to secure.

We can expect differences in the perception and analysis of these policies, rules and practices under review, leading, we hope, to some constructive criticism which will enable the Commission to complement its research and analysis and eventually draw conclusions and make recommendations with regard to this important aspect of its terms of reference. Indeed, these policies, rules and practices are the legal or *de facto* framework within which military activities or missions are conducted. This week's exercise should assist us and the public in understanding the context within which the Somalia mission originated and took place. It will pave the way for the evidentiary hearings at which the actual facts, pertaining to the Canadian Airborne Regiment and the Canadian Airborne Regiment Battle Group prior to deployment to Somalia and in theatre, will be established, scrutinized and commented along with the institutional responses to the administrative, disciplinary and operational problems encountered in the course of the mission.

In the course of these hearings, the participants will be given some latitude as to how they intend to review the policies and rules and how they will address the general policy issues. But I want to re-emphasize that the parties' submissions have to address general policy issues. The Commission will not hesitate to intervene and curtail any presentation if submissions or presentations stray on controversial issues or questions of fact as these matters are more properly the focus of the evidentiary hearings scheduled to start in late August and at which parties will have the opportunity to examine and cross-examine witnesses.

Order of Presentation

For the next two days, we will hear presentations from the Department of National Defence made at the request of Commission Counsel. At the end of each presentation, there will be a period of questions from the Commissioners. I will leave it to Commission Counsel to explain the order of these presentations and the inherent limits to those presentations.

On Wednesday morning, submissions will be made by the Canadian Airborne Forces Association and B'Nai Brith Canada. In the afternoon, the Commission will hear from the Canadian Jewish Congress. On Thursday, we will conclude the session with presentations by the Coalition of Somali-Canadian Organizations and the Urban Alliance on Race Relations.

Protecting the Vulnerable Witness from Reprisals

Before I turn to Commission Counsel, I would like to address the issue of the protection of vulnerable witnesses within the Commission's inquiry process.

From the day this Commission of Inquiry has been established, concerns have been expressed in the media that the Commission might not be able to get to the bottom of the matter because some witnesses from the military, especially privates, would fear reprisals from the authorities or fear being prejudiced in their military careers.

First, it is important to say at the outset and make it clear that there is no evidence of threats of any kind being made to potential witnesses before the Commission.

Nor are there any reasonable grounds for us to believe at this time that threats are or will be made. In short, there is no real, tangible or objective evidence to sustain these concerns.

Second, Canadian soldiers have been shown over the years, time and time again, whether it is in the First World War, or the Second, or the Korean War, or in the numerous peacekeeping missions they have been involved in for 30 years, to be fierce and fearless. They have shown a tremendous sense of justice and duty under threats against their lives, physical integrity and personal security. I doubt that testifying at our public inquiry and telling the truth is an undertaking of such an order and magnitude as to deter them from fulfilling their duties and contributing to justice.

Members of the Canadian Forces are persons of honour and institution. They believe in the military institution they have chosen to be part of and work for to the greater benefit of the institution and, ultimately, of the free and democratic society that this institution is committed to promoting and protecting.

I am sure that members of the Canadian Forces know, as I have mentioned it many times now, that the purpose of our inquiry is to review the functioning of the military institution, their institution, with a view to strengthening it, restoring its legitimate pride and credibility and finally restoring public confidence in it. They know that what is at stake here is something fundamental that transcends individuals: it is the respectability, reputation and future of their institution.

This is why it is important to get to the bottom of the matter and our Commission is committed to doing precisely that. Proud, fearless and dedicated members of the Forces not only understand such commitment by the Commission, but see their participation in this public inquiry, I have no doubt, both as a fundamental duty and a unique

opportunity to constructively review the institution they have trained so hard for and devoted the best years of their lives to.

Although the Commission does not share the concerns expressed in the media, which, I am sure, are more theoretical than real, especially in the minds of the members of the Forces, a number of steps have or will be taken to favour the establishment of the truth and protect those who will contribute to that process.

First, the Commission has adopted a rule of practice and procedure which treats as confidential the information it receives from whatever source. This rule is designed to assist the Commission in its investigative process as well as its inquiry by protecting its sources of information.

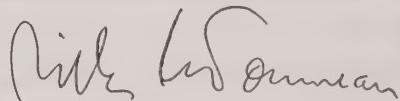
Second, the Commission has the power under its Terms of Reference to hear testimonies *in camera*. The Commission has made it clear a number of times (in numerous interviews following the establishment of the Commission, in its opening statement at the procedural hearing, at the end of the procedural hearing pursuant to an objection to the public release of some material and in a set of reasons released last week) that the process will be public and open. In that respect, the Commission believes that a substantial measure of protection to a witness against future reprisals is likely to come from the public nature of that witness' testimony and, as a result, the public scrutiny to which would be subjected those who would be tempted to exert reprisals. However, should the need arise and because of the peculiar context of the armed forces where the relationships between individuals are so hierarchical, the Commission will have no hesitation to resort to its power to hear testimonies *in camera* where a witness is particularly vulnerable and needs protection, where the fears of that witness are real, serious and legitimate, where it is necessary in the public interest to

obtain the testimony of that witness and where the information that the witness has cannot be obtained from other sources.

Third, the Commission will investigate any allegation, complaint or evidence of on-going reprisals against potential witnesses while its inquiry is in progress.

Fourth, the Commission will, if need be, include in its final Report a proposal for a review mechanism whereby a Committee of the House of Commons, acting as a sort of *ad hoc Ombudsman*, would be called upon to review, upon request and systematically every five (5) years, the file and career progression of those who will have testified before this Commission of Inquiry. The report of that Committee with its findings, conclusions and recommendations would be publicly tabled in the House of Commons. This mechanism would act both as a deterrent and a remedy against reprisals without preempting other disciplinary measures and legal recourses against those who would have abused their rank, power and authority.

The Commission is confident that these measures are sufficient to eradicate the possibility of reprisals and protect those who may be vulnerable in the military system.



Gilles Létourneau, Chairman to the
Commission of Inquiry into the Deployment
of Canadian Forces to Somalia

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

Opening Statement at the Evidentiary Hearings
held on the week of October 2, 1995

We would like to welcome counsel, participants and members of the public to the beginning of these evidentiary hearings at which witnesses will be heard in relation to the deployment of Canadian Armed Forces to Somalia.

Before we leave it to Commissioners' counsel to define the scope of this first round of evidentiary hearings, we believe it is important to remind the participants and the general public of the nature of an inquiry.

This inquiry, we have said it many times, but it bears repeating, is not a trial. It is not an adversarial procedure and therefore the evidentiary and procedural rules developed to ensure the harmonious unfolding of a trial or adversarial process do not apply. We are not concerned with determining civil or criminal liability. It will be for others to decide what actions, if any, are warranted and there has already been a number of criminal and disciplinary proceedings before Courts Martial as a result of the events which occurred in Somalia. We do not intend to rehash the facts, incidents and testimonies that were presented to the Courts Martial with a view to second-guessing them.

In addition, it is not the task of the Commissioners to embark upon a witch-hunt or a crusade to determine who else in relation to specific incidents could or might have been a party, an accomplice or a witness to these incidents. Indeed, we do not intend to determine the liability of those persons who played perhaps a primary role in relation to a

single incident, but in fact only a secondary role in the context of the whole Somalia operation. This is simply not the role of this inquiry.

The purpose of our inquiry is to look at the structural institutional deficiencies which may have contributed to or permitted the occurrence of the sad events that we now know as well as the institutional response to these deficiencies.

We are primarily concerned with the decisions, omissions, if any, and actions of those superior officers who could have influenced the course of the whole Somalia operation as opposed to a single incident. We will be looking at possible institutional, even systemic, operational, disciplinary and possible administrative problems and, if there were problems, whether or not there was a failure of senior military officers and public servants to properly address them. We are going up the chain of command, not down at the level of the junior ranks where various corrective measures have already been taken. We will be looking at the planning, organization and execution of the whole Somalia operation and the role of the senior officers in that respect. However, if new relevant information comes to light concerning lower ranks, this will be addressed by the Commission.

The inquiry is an investigation by appointed Commissioners. People often refer to us as the Commission of Inquiry into the Deployment of Canadian Forces to Somalia and it is a convenient, practical and expeditious way of describing those who have the mandate of investigating the matter. However, there is legally no Commission as such. There are Commissioners, i.e., persons commissioned under the *Inquiries Act* to conduct an inquiry into a defined subject matter. The jurisdiction to investigate is attributed to the Commissioners personally, not to a Commission. The Commissioners do not constitute a Court and are not a branch of the judiciary. Although Commissioner Rutherford and myself are members of the judiciary, we do not sit here today as judges, but we serve together with Commissioner Desbarats as individuals mandated by a Committee of the Privy Council to investigate and report upon the so called Somalia affair.

Our inquiry is inquisitorial in nature. It means that the Commissioners are able to apprise themselves of matters falling within the Terms of Reference by various means and from various sources. They can, and actually do, conduct research in matters such as leadership, military accountability, peacekeeping, peace enforcement, and the military culture. They can investigate issues through investigators. They can meet formally or informally with experts to discuss matters of concern to the inquiry or assess the relevancy of some material. They can review existing rules, regulations, policies and practices with the assistance of their own experts. They can do a comparative analysis of topics with comparable jurisdictions such as the United States or the United Kingdom. They are not bound by the rules applicable to judicial notice which, in the context of an adversarial proceeding such as a trial, limit a judge's capacity to inform himself or herself of matters. This is because, in an adversarial proceeding, the scope of the contradictory debate is determined by the parties and the judge plays a passive role. The active role is played by the parties. In an inquiry like this inquiry, the scope of the investigation is determined by the Commissioners themselves within the confines of the Terms of Reference and the Commissioners play an active role in collecting, gathering and adducing the evidence. They are the ones investigating the matter and the participants are there merely to assist the Commissioners in their function. The role of Commissioners in an inquiry is very different from the role of a judge in a Court of law.

Evidentiary hearings like these hearings this morning are, therefore, only one means, albeit an important one, of investigating the deployment of Canadian Forces to Somalia. In the course of these public hearings, facts will be established through oral and documentary evidence. It is important to understand that the Commissioners are not limited to the evidence gathered through these evidentiary hearings. Subject to fairness, and we will later develop this notion, they are entitled to look at other existing evidence or evidence gathered in other proceedings.

For example, the Commissioners have the power, we would say the duty, to look at the evidence adduced in the various Court Martial proceedings held against those who were charged in relation to incidents occurring in Somalia.

In the same way, they can and have looked at the report of the Internal Board of Inquiry established by the military after the Somalia incidents. This report and the transcripts of the Court Martial proceedings have been filed with the record of the inquiry along with other material such as the Geneva Convention, Canadian Forces Administrative Orders on Racism, Harassment, Discrimination, Conduct of officers and Warrant officers, Military accountability and the Chain of Command to name some of the material filed. All this material is there for the Commissioners to consider, analyse and make whatever recommendations are necessary at the end of the inquiry.

In the course of these evidentiary hearings, as we have already mentioned, relevant oral and documentary evidence will be adduced. This will be done with the assistance of Commissioners' counsel. Such evidence will be discussed and analysed and counsel for the parties who have been given participant status in the inquiry will participate in the discussion of such evidence with a view to assisting the Commissioners in their undertaking.

Although the rules of evidence applicable in adversarial proceedings such as a trial do not apply to this inquiry, common sense and fairness require that the final conclusions and recommendations of this inquiry not be based on mere speculation, unsubstantiated rumours, innuendo and unreliable or incredible evidence. This is particularly the case when the reputation of participants in the inquiry, members of military personnel or citizens may be detrimentally affected by these conclusions or recommendations.

Notwithstanding that hearsay (or, in lay terms, second-hand) evidence can be admitted in the inquiry and is useful to provide general information, Commissioners, in the interests of fairness, will be vigilant to ensure that only hearsay evidence that is necessary and reliable will be considered if and when it comes to the making of a finding of fact which could adversely affect an individual.

Furthermore, Commissioners are anxious to ensure the orderly presentation of the evidence in order to maintain the fairness of the process and to avoid the appearance of an adversarial contest. Therefore, as a general rule, all witnesses will be examined initially by Commissioners' counsel. Once the examination-in-chief of a witness by Commissioners' counsel is completed, counsel for the witness who has participant status will be permitted to continue the examination-in-chief to bring out any relevant matters that had not been covered by Commissioners' counsel. This approach ensures greater fairness and enables the participants to bring out the evidentiary elements necessary for a judicious decision-making process.

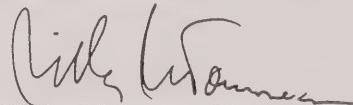
Once examined, a witness can be cross-examined by counsel for other participants on matters that directly affected their clients.

The inquiry must unfold not only in an orderly manner, but also in a timely fashion. This means that the examinations and cross-examinations of witnesses have to be properly focussed if this inquiry is to respect its projected schedule. At present, no time limit has been put on the participants although, as a general rule, the parties entitled to cross-examine witnesses will collectively be given approximately the same amount of time as the amount given to those who lead the examination-in-chief. We expect the cooperation of the participants and their counsel in this process. However, should it appear that the participants

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cannot appropriately coordinate their efforts so as to respect the schedule, the Commissioners will not hesitate to intervene and, if necessary, impose time limits.

This concludes my opening remarks. I will now ask Commissioners' counsel to add a few words as to the scope of this first round of hearings.



Gilles Létourneau, Chairman to the Commission of Inquiry into the Deployment of Canadian Forces to Somalia

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie

Opening Statement at the In-Theatre Evidentiary Hearings
commencing April 1, 1996

On behalf of the Commission, I wish to welcome those who are present in this room or viewing these proceedings to the commencement of the in-theatre phase of the Commission's evidentiary hearings. Since we are about to embark upon a new phase of our endeavours I thought that it might prove useful to elaborate upon and review some basic elements that are critical to a proper appreciation of the purpose and work of this Commission. You will forgive me if some of what I have to say to you today echoes statements that our Commission has made at other stages or in other contexts of our work but I believe that it will be helpful for all concerned for certain matters to be underscored as we move into this most delicate phase of our proceedings.

The nature of the Commission's mandate

This inquiry was constituted because of failings in the deployment of Canadian forces to Somalia. The public was justifiably

alarmed by a number of incidents that had occurred in Somalia. A number of steps were taken by the military to address and respond to these incidents. Among these, an internal Board of Inquiry was established to examine some of the same issues which we are now called upon to examine. At the same time, and more in the public eye, numerous courts martial proceedings were launched against soldiers who were thought to be directly implicated in the most contentious and highest profile events. Those charged and held accountable in these proceedings for the most part were soldiers of lower rank. It was felt that the criminal proceedings before the courts martial, due to their narrow focus on individual behaviour and single incidents, did not allow for a sufficiently comprehensive examination and evaluation of all of the facts surrounding the Somalia mission. Also, it was felt that sufficient attention had not been directed to the role of the upper ranks in the discharge of this operation. This inquiry was convened in order to shine a spotlight on this larger field. We have undertaken our task with the recognition that these are difficult times for the military in Canada. What we have been asked to investigate is not pleasant and, indeed, is hurtful to the many distinguished men and women who have served in the great institution of the Canadian military. However, our Commission of Inquiry carries the hopes of the military institution and those who serve within it, as well as the Canadian public, that it will be the vehicle for complete disclosure and the means whereby public trust may be restored in this cornerstone institution.

Progress to date

The Commission of Inquiry has been in operation for just over one year now. We have not been idle. During that time we have obtained, catalogued and studied the voluminous documentation that these events have produced (we now have over 80,000 documents in our possession) and undertook our own investigation and research. Three sets of hearings have been convened. Our initial hearings were procedural hearings that were convened in order to establish rules of procedure and determine who should have standing before the Commission, that is to say, who should be participants in each of the public hearings. These initial hearings were followed by policy hearings that were held in mid-June, at which parties or interested groups were invited to submit their views or develop their written briefs with respect to matters of policy relevant to the issues this Commission is directed to consider. Briefs and submissions of this nature were of value and assistance to the Commission in defining the scope of its mandate and determining the shape of its research program. Starting in late September of the past year the Inquiry began the long process of calling witnesses to testify before us at evidentiary hearings conducted on-site at our premises in Ottawa. In these evidentiary hearings, which were confined to the pre-deployment phase of the Somalia operation, we attempted to

ascertain the facts as they happened with a view to determining whether institutional or structural deficiencies existed in the chain of command, in the planning and initial execution of the operation, and whether the institutional responses to the operational, disciplinary and administrative problems encountered in the pre-deployment phase of the operation were adequate. We were concerned with such issues as operational readiness, leadership and discipline, as these are matters possessing implications for the ultimate deployment of the forces to Somalia and for the adequacy of the decisions and actions that were taken once Canadian troops were deployed in-theatre.

The in-theatre phase

With the launching of the in-theatre phase our focus now shifts to the nature of the mission and tasks assigned to the Canadian Joint Task Force Somalia and to questions of its suitability to accomplish the task assigned, the actual manner in which the mission was conducted, the effectiveness of the decisions and actions taken by leadership at all levels of the chain of command, and the adequacy of the response to the operational, disciplinary and administrative problems encountered. Personnel issues, such as the professional values and attitude of all rank

levels to the lawful conduct of operations, the treatment of detainees and the extent to which cultural attitudes affected the conduct of operations must also be explored. The Commission has also been orienting itself towards an ultimate review of allegations of cover up and destruction of evidence in order to determine whether these allegations are well founded. To evaluate this, we will be concerned with the effectiveness with which information concerning operations, discipline and administration were reported through the chain of command and with the timeliness, adequacy and effectiveness of the decisions and actions taken by the leadership in response to what was encountered.

An investigation, not a trial

Thus, our Commission of Inquiry is in the process of reviewing the Canadian military's actions and decisions for the purpose of determining what may have led to the controversial incidents involving Canadian soldiers in Somalia. Our mandate, it should be noted, includes proposing appropriate corrective measures for future missions. The inquiry, as we have asserted in many public statements, is not a trial, nor is it a retrial of any trial that has already been held, although its hearings include an

institutional examination of the causes of and responses to incidents that have previously resulted in the charge and trial of individuals.

A commission of inquiry is a proceeding that is investigatory in nature. It should not be confused with either a civil or a criminal trial. There is, to use an ancient Latin phrase, no *lis inter partes* (i.e. no litigation), among the parties accorded status or between the parties and the commission itself. Commissioners are often described (accurately, in my view) as investigators who sometimes are obliged to proceed before evidence is marshalled, or before issues are clearly delineated, and even before the course of the inquiry is clearly charted¹. The investigatory function "can produce tension between traditional notions of due process for persons whose conduct is being investigated and the inquiry process itself, which, unlike a trial, does not commence with a discovery process whereby parties to an action have full disclosure of their opponent's case prior to trial"². As Commissioners we are constantly alive to this tension and we have endeavoured at all stages of our process to ensure that the requisite degree of procedural fairness is accorded to all who are affected by it.

¹ Mr. Justice W.D. Parker, *Commission of Inquiry into the Facts and Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens*, at pp. 334-335.

² *Ibid.*

Not a search for criminal misconduct

It is important for everyone to understand - parties to these proceedings, their counsel, members of the public, and representatives of the media - that this inquiry is not a search for criminal misconduct. We are asked to investigate the very specific matters that are set out in our terms of reference. While we expect to hear much in these proceedings that may portray a failure of leadership, an infidelity to duty, or a breach of applicable statutory provisions or rules, it is not our function to make recommendations concerning or report upon our views concerning the criminal or civil liability of individuals. Others are entrusted with those responsibilities. We are charged primarily with reporting upon systemic and institutional failures and shortcomings. Our findings in relation to these systemic issues may also be linked to and reveal individual failings. Where such individual failings have a sufficient nexus with systemic issues and the clear provisions of our terms of reference they, too, will be subject to findings and commentary.

We recognize that these findings that may reveal individual failings can have serious consequences for the person affected and we will be extremely cautious as to how we proceed in this area. Any findings of this nature that we do make will be based solely and scrupulously upon the

evidence that has been formally disclosed to these individuals or received in our hearings. While the rules governing the admissibility of evidence in criminal and civil trials are not normally applicable to a commission of inquiry and even though in our hearings we have already received and will continue to receive hearsay evidence we, like other commissions of inquiry, have done so for a limited purpose: to provide general information to the Commissioners, the weight of which is to be determined by the Commissioners. In preparing our report, we will not, as regards any issue of individual failure, rely upon any evidence that would not be admissible in a civil or criminal proceeding in determining whether an adverse finding on credibility or misconduct should be made³.

One final observation that must be made in this regard concerns the fact that, beyond the reality that this inquiry is not a trial or a retrial and is not charged with identifying and reporting upon criminal misconduct, this inquiry also is not an examination or re-examination of the issue of compensation to the victims or a means to secure the redress of any individual's complaint.

³ See, Mr. Justice C.L. Dubin, *Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance*, in "The Process", xxix.

Focus on the chain of command

What all of this means is that the inquiry's primary focus is on the organization and management of the Forces and the Department of National Defence rather than on the individuals who comprise it. To the extent that we will be examining the actions of individuals, it is the actions of those who fall within the chain of command and the manner in which they exercised leadership that we have been asked to investigate.

Our terms of reference are very clear that it is the chain of command system and leadership within the chain of command that is to be our concern. Soldiers of lower rank, have already received their full share of attention through the various responses of the military justice system and the system of military discipline. We have been asked to look beyond these soldiers and examine the upper echelon and its responses to the identifiable failures and shortcomings of this military operation. It is for this reason that we have accorded standing to a number of officers of higher rank. Those in the upper ranks require this status for we may, in due course, make pronouncements that reveal their misconduct or give voice to allegations that bring discredit upon them. This is not the case for those in the lower ranks. While it is unavoidable that some of these soldiers will be touched by the evidence that we receive, sometimes in an unflattering way or in

ways that may cast doubt upon or impeach their credibility, they will not be individually singled out by us in our final report for adverse commentary.

Neutrality and the role of Commission Counsel

I wish to emphasize that the Inquiry's fact-finding process has been and will continue to be conducted openly and in a non-adversarial manner. The Inquiry is a search for the truth and the reasons for what has transpired, and that search is being pursued with due regard for procedural fairness and fundamental justice.

In this context, it is appropriate once again to say a word or two about the role of Counsel for the Commission. The role of Commission Counsel is to assist and advise the Commissioners in their conduct of the Inquiry, whether it be on substantive or procedural issues. It is Commission Counsel who, on our behalf, conduct interviews with prospective witnesses and formally bring evidence before us at our hearings. Commission Counsel, I wish to emphasize, will not participate in the writing of the final report. In addition, in order to ensure their neutrality, they will, at the close of the hearings, summarize the issues for the benefit of all participants and the public, but they will not make submissions regarding their views of the

evidence or on the findings or recommendations which the Commission should make.

Conflict of interest

Also, at this juncture, it is appropriate for me to say a word or two about the role and status of representatives for the Government of Canada before this inquiry. At various points allegations of conflict of interest have been raised by various parties to these proceedings against Government counsel and it is fair to say that this Commission also has been concerned about this issue. For this reason a channel of communication has been opened between this Commission and the Government, as represented by the Department of Justice, in order to identify emerging problems and prevent their occurrence.

The Government of Canada, as is its right, has unified representation before this inquiry. Mr. Vita (of the Department of Justice) is the lead counsel for the Government of Canada and he is assisted in our proceedings from time to time by other counsel. His team includes Mr. Préfontaine (also of the Justice Department), L. Col. Carter, L. Cdr. Wirth and Captain Carson (all of whom are counsel with the Judge Advocate

General's Department). Collectively these individuals represent the single entity - the Government of Canada - to whom we have accorded standing.

The Commission has been reassured that the Government has in place a variety of internal mechanisms to address the issue of conflict of interest and these processes have properly been activated in order to address certain concerns that we have raised and the media has reported upon over the course of the past several weeks. We are satisfied that appropriate steps have been taken to address this problem and that the understandings that have been achieved with regard to this issue will ensure the integrity of the Government's process and safeguard our own proceedings.

Intimidation and fear of reprisal

From the earliest days of this Commission of Inquiry, concerns have been expressed in the media and elsewhere that the Commission might not be able to get to the bottom of the matter because some witnesses from the military, especially privates, would fear reprisals from the authorities or prejudice to their military careers. It is important for me to state that there is little evidence to suggest that threats of any kind are being made to potential witnesses before the Commission. In short, while there is at this

time little real, tangible or objective evidence to sustain these concerns, we know that they exist and we are sensitive to them.

Because of this, a number of steps have been taken to favour the establishment of the truth and protect those who seek to contribute to the Inquiry process, including adopting a rule of practice and procedure which treats as confidential the information it receives from whatever source; allowing testimony *in camera*, where necessary (e.g., where a witness is particularly vulnerable and needs protection, where the fears of that witness are real, serious and legitimate, where it is necessary in the public interest to obtain the testimony of that witness and where the information that the witness has cannot be obtained from other sources); undertaking the investigation of any allegation, complaint or evidence of on-going reprisals against potential witnesses while its inquiry is in progress; and, if we find it necessary, we are prepared to include in our final Report a proposal for a review mechanism whereby a Committee of the House of Commons, acting as a sort of *ad hoc Ombudsman*, would be called upon to review, upon request and systematically every five (5) years, the file and career progression of those who will have testified before this Commission of Inquiry.

The Commission is confident that these measures are sufficient to eradicate the possibility of reprisals and protect those who may be vulnerable in the military system.

Visits to bases

In addition, to convince ordinary soldiers of the seriousness of our purpose and of the strength of our resolve, we have, over the past few months, paid visits to several bases across Canada where we met with soldiers, both in groups and in individual sessions. These were not Commission hearings. These were confidential background meetings designed to explain our process, reassure the troops of our good faith, encourage candour and win their confidence - all in an effort gain their assistance in a difficult investigation of a most delicate and important subject. We were heartened by the response that we received. Many soldiers spoke openly about their experiences and observations. Some have gone further and agreed to help us by providing testimony or encouraging others to testify in our forthcoming hearings. Where they are in fact called upon to testify, they will be formally interviewed for that purpose by our counsel and fair and appropriate disclosure of what they are expected to provide will be made to all parties to these proceedings.

This, then, concludes the formal portion of my remarks. Somalia, as I emphasized during our visits with soldiers across Canada, while clearly an event of sorrowful proportions for Canada and its military, presents an opportunity; an opportunity for considered reflection, for confronting painful truths and, ultimately, for renewal through lessons learned and the need to make necessary adjustments and alterations. We will, in the days ahead, be confronting much that is unpleasant and regrettable from the point of view of Canada's military and those who support it. We do so in the belief that this inquiry can help the Forces overcome the setbacks suffered and restore the nation's pride in its military. We will attempt at all times to ensure that what emerges in these proceedings will be a fair and balanced picture of what has transpired. While our terms of reference oblige us to delve into what went wrong in Somalia, they do not preclude an examination of what went right with this mission and it is here, with the positive aspects of the Somalia experience, that we would like to begin as we embark upon the in-theatre phase. Our counsel will have more to say about how they intend to proceed in this regard, and it is to them that I now turn.

Press Conference January 13, 1997

Remarks by Commissioner Létourneau

The 1995 Government press release announcing the creation of this Inquiry states

“ ‘The terms of reference are broad enough to answer all allegations made concerning the activities of the Airborne Regiment and the actions and decisions taken by all levels of the chain of command and the Department of National Defence during the pre-deployment, in-theatre and post-deployment phases of the Somalia operation’, said Defence Minister Collenette. ‘The terms of reference underline the willingness of the government to confront all of the issues that have been raised.’ ”

The Government has now seen fit to limit the extension that our Inquiry has sought to June 30, 1997. To my knowledge, a step such as that which has now been taken is unprecedented in the history of commissions of inquiry. We had asked for a reporting deadline that, at a minimum, would have allowed us to adequately complete our work by December 31, 1997. We Commissioners are profoundly disappointed at this turn of events, inasmuch as the time frame that has been stipulated severely restricts our ability to delve into crucial aspects of the mandate that has been specifically assigned to us in our original terms of reference. Moreover, this Inquiry was established in large measure to alleviate concerns that an imbalance had occurred in the official reaction to the events in Somalia. The feeling was that too much attention had been focused upon the activities of soldiers of lower rank and that not enough effort had gone into examining the role and responsibility of higher ranking officers, senior bureaucrats and government officials. The deadline that is now being imposed upon us makes it impossible for us to comprehensively address the question of the accountability of the upper ranks.

We believe that had we been given until the end of December, just six additional months, we would have been able to credibly canvass all of the major issues that we were originally asked to investigate.

We will be able later in this press conference to answer your particular questions as to what this foreshortened reporting deadline entails. However, in very broad terms the deadline precludes our examining the nature and adequacy of the response of National Defence Headquarters to the important events that transpired in Somalia (especially, the significant incidents that occurred on March 4, 1993, that we have been examining of late, and the high-profile events of March 16, 1993 involving the torture death of Shidane Arone) and it almost completely eliminates our ability to probe the crucial issue of possible cover-up in the upper reaches of NDHQ and the Forces.

On the subject of cover-up a few words of clarification are needed: Cover-up is expressly mentioned in the terms of reference establishing our Inquiry. We are obliged to inquire into whether a cover-up occurred and, if so, who participated in it. "How far did the cover-up extend?" is the question we must explore. We have been paying extremely close attention to the events of March 4, 1993 because a homicide occurred on that night and the true facts of that event may have been covered up in its aftermath. We had planned to meticulously follow the trail of responsibility in relation to these events up the chain of command and into the then Minister's office, if need be. The newly announced deadline now precludes our ability to examine these events or scrutinize the activities of senior officials.

On this issue of cover-up, I wish to be crystal clear - we have **not** reached any firm conclusions at this point on this issue, both as regards whether a cover-up existed and still exists or, if it existed, how far it extended. Cover-up becomes of great concern if we first find the origins of one in 1993 and, thereafter, we find that an effort has been made to continue to suppress or distort information in relation to these events. Particularly troublesome for us in carrying out the task entrusted to us, has been the frustration, whether through ineptitude or with deliberate intent, of our efforts to obtain from the Department of National Defence all of the information and documentation relevant to our terms of reference and the key events of the 1993 deployment. If deliberate, these actions would point to the commission of an on-going cover-up. This would then be a matter that should be of concern to our elected representatives, lest it appear that the cover-up itself is being covered up.

What the disappearance of cover-up and the responsibility of senior officials in NDHQ from our plans now also regrettably involves, is the inability of the public to see and hear, among others, the testimony of Major Armstrong, Major Buonamici (who, it will be recalled, complained of harassment from certain officials in NDHQ and the Forces, and of interference from the chain of command in the exercise of his military police duties), Kyle Brown, former CDS's Anderson and DeChastelain, as well as former Deputy Minister Robert Fowler and former Defence Minister Kim Campbell.

We have been deeply troubled by the decision but we have chosen, as we believe we must, to honour our commitment to the government and the public and table our final report on June 30, 1997. That report will necessarily differ significantly from the kind of report that we would have tabled were we allowed to complete our work as we had planned.

Anyone familiar with our inquiry and its progress will realize that our original reporting deadline of December 30, 1995 was wholly inadequate to address the broad-ranging and numerous questions into which the Government had asked us to delve. We alerted the Government to the inadequacy of the time allotted to us early on in our mandate. Indeed, we have done so on numerous occasions. We have, in consequence of the unrealistic time frame, been obliged to seek and have been granted extensions from time to time but, in truth, we have never received all that we have requested on any of these occasions. This has unjustly created an appearance that we were unable to project our plans well and has required us to petition the Government for relief more often than we would have liked. While the government has told us that they preferred us to finish our work within the time stipulated, they have evinced some sympathy as well for the magnitude of our task. They certainly, at no time, ever told us that we would be unable to complete the work that they had asked us to undertake. Quite the opposite. In the letter announcing our extension to March of this year there was a recognition that the time limit being imposed upon us was insufficient and we were told that the matter could be revisited and discussed in the Fall of 1996. Since that letter was received we repeatedly informally advised government officials that we could not meet a March 31st deadline. On several occasions, we alerted officials from the Privy Council Office and SILT, both orally and in writing, that we

would need at least until December, 1997 to complete our endeavours. While we have been struggling under the weight of a reporting deadline of March 31, 1997, it should be understood that the request that yielded that reporting date in fact sought a reporting deadline of September 30, 1997 (a mere three months short of the December '97 deadline that was just refused).

From the outset, we have been working extremely hard to produce a timely report. To the uninformed, our progress may have appeared slow. To be sure, it was slower than we would have preferred, but our progress was undeniably steady and relentless, and much of the delay that we encountered must be laid at the feet of the very Ministry that we were established to investigate. We have been compelled to make them publicly accountable for their failure to comply with our order to remit to us all Somalia-related documents and for an alleged attempt to destroy evidence of the alteration of documents. As a result of our efforts, we received an additional batch of 30,000 documents, within which was housed several key documents that we had been requesting in vain for months.

The conduct of a public inquiry is an important aspect of the democratic process. The commitment to a full, fair and comprehensive inquiry serves the public interest in seeing that the truth will prevail as regards issues that cannot be adequately or as effectively probed in any other forum. I have no doubt that what we have been labouring at for these many months has been extremely worthwhile and beneficial to the Canadian public and its military institution. Although our mandate has been truncated, we will nevertheless endeavour, in the days ahead, to shed as much light as is possible in the circumstances on the contentious events that the Government has asked us to investigate.

While we still prefer to see this journey carried to its full extent and logical conclusion, we will, in any event, in the time allotted to us, strive to ensure that the public interest is safeguarded and served in a manner that will bring justifiable pride to the Canadian people.

Remarks by Commissioner Desbarats

Frankly my first reaction was to resign.

When I was asked to serve on this Inquiry in the spring of 1995, I accepted the government's assurances that what was wanted was a full and fair investigation. I had no reason to doubt the public statements of a Minister of the Crown. The scope of the Inquiry was confirmed by our terms of reference which ordered us to look beyond the events in Somalia to broader questions of leadership and accountability and to determine whether events in Somalia were the work of "a few rotten apples" or whether flaws in our system made something like Somalia inevitable.

Now the government has unilaterally broken the contract that it had made with myself and my fellow commissioners. It has curtailed our Inquiry in a way that will prevent us from fulfilling our terms of reference and answering some of the most crucial questions that the government itself had presented to us. This is not just a matter of shaving a few months from our schedule, let's be clear about that. This is a drastic curtailment of our work. As far as I can determine, it is unprecedented in the history of national public inquiries in Canada.

Ceci étant dit, vendredi dernier, le gouvernement a unilatéralement rompu le contrat nous liant. Le gouvernement a écourté notre enquête de telle façon que nous sommes maintenant incapables d'assumer nos responsabilités découlant du décret et de répondre aux questions cruciales demandées par le gouvernement lui-même. Je tiens à préciser qu'il ne s'agit pas simplement de retrancher quelques mois de notre horaire de travail mais bien d'une coupure draconienne. De mémoire, cette décision est sans précédent dans l'histoire des commissions publiques d'enquête au Canada.

The fact that this decision was linked publicly to political considerations made it even more outrageous.

So when the government broke the terms of its contract with me, I had every right to resign. Some might say it would have been the correct and honourable response.

By staying, I have agreed to participate under protest in an incomplete and flawed process. I've done this because of the support and encouragement that we have had all along from many sectors of our military and civilian population. Just because the government has broken faith with me doesn't mean that I can break faith with those who have supported and encouraged us, often at significant risk to their own careers and reputations in the case of some of our soldiers. I decided that the best way to keep faith with them would be to continue with our crippled Inquiry to demonstrate, as we proceed, exactly how serious this order of closure is, exactly how much we will not be able to look at. This will be even more apparent in a few months than it is now.

I also appreciate the amount of good work that already has been done, in our hearings and in the research and staff work that will eventually be made public. It is vital to complete as much of this as possible, partly because it will be useful and partly to demonstrate how much we won't be able to finish.

I'd like to close these remarks by stating that I've been impressed since the beginning of this process by the fact that a public inquiry like ours really is a unique part of our system. I've been a close observer and student of Canadian politics for the past 40 years, in Quebec and Manitoba before spending a decade in the Press Gallery here in Ottawa, and I know that genuine independence is a very rare commodity. In this town almost everything is connected to something else by invisible networks of power and indebtedness. But a public inquiry like ours

really does stand outside the system. Watching my two fellow commissioners, I have come to appreciate that the phrase "independence of the judiciary" is a living reality. For a government to act in a way that infringes on the independence of a public inquiry is alien to our political tradition and endangers principles of accountability.

In future I'm sure there will be many people who will think twice about serving on public inquiries because of this example.

Je suis convaincu, qu'à l'avenir, cette décision aura pour effet que plusieurs personnes y penseront deux fois avant d'accepter de servir au sein d'une commission d'enquête.

Remarks by Commissioner Rutherford

I wish to add a few remarks to what you have already heard.

I am dismayed by the turn of events that has led to the premature termination of this Inquiry. As you know, I was a late arrival to the Inquiry and I, perhaps more than others, was of the belief that the Inquiry would have to get its work done by the December 1995 deadline. Soon after my arrival, however, I concluded that this wish for a December report was simply an impossibility. The job that the Government had asked us to take on was simply too enormous and too important to try to shoehorn into a six month or even a one year package.

I took this task on out of a sense of duty, both to the Government but also to the great institution of the Canadian military in which I have had the honour to serve. I have always been prepared to take the time that is necessary to do the job that has been assigned to us and do it well. It is not without some disquiet that I admit to feeling betrayed by the fact that the opportunity to fully complete this important endeavour is to be denied to me and my fellow Commissioners. The sense of loss that I feel here, however, is not personal. The loss is one that will be felt by the Canadian military and the Canadian people.

This is work that should be allowed to be done as it has been done to date - completely, comprehensively and professionally. An opportunity of this nature should not be squandered. If there are fears for the morale of the Forces, I should then express my fears for the message that this announcement is now sending to the young enlisted men and women of today's military.

Canada has been fortunate to have had the committed service of the many men and women who have tirelessly invested their time, expertise and energy in this Commission of Inquiry. They will, I am sure, yet produce a creditable report on your behalf but the country will be the poorer as well for not having what could have been possible.

I am prepared to carry on as a Commissioner in this Inquiry - there is important work yet to be done - but I do so with a real sense of sorrow and regret.

I believe strongly in the value of the work that we have been doing. There is larger dimension in which the historic value of this Commission is to be found. Our purpose has not been the public pillorying of corporals, captains and colonels, the vast majority of whom have performed their jobs faithfully and well. Our purpose has been, through an admittedly painful and very public examination, to look through their experiences at the larger system of which they are a part and attempt to understand where the system failed them.

It is extremely unfortunate that the Government of Canada must now seize upon this problem of time and curtail the Commission's enquiries. In doing so, it has crippled this Inquiry at the point where we hoped to begin pulling many of the separate threads of the investigation together and weave from the events and the experiences of individuals the whole cloth of the problems faced by the Canadian Armed Forces and the Department of National Defence. It seems to me to be an exercise of false economy to sacrifice many months of effort on the part of this Commission, and public agony on the part of men and women in the Armed Forces, for the price of a few weeks or months.

There is also a larger tragedy here. The death of Shidane Arone, the ultimate trigger of this

Inquiry, might have been given a greater meaning had this Commission been permitted to complete its work. The same might also be said of the death of the Canadian Airborne Regiment, the ending of military careers, and the sullyng of the good name of Canada's soldiers. As Commissioners, we were presented with the opportunity to turn all of this to a greater historic purpose. We were in a position to allow the next generation of Canada's soldiers and the Canadian public to remember all of this as the point in our history when we corrected the mistakes of the past and resolved the systemic problems that appear to have plagued the Canadian Forces long before Somalia.

That the Minister of National Defence apparently believes, based upon his weeks of experience as Minister, that the problems with which we have been wrestling for the past two years are simply a matter of policies and guidelines to be issued, is a measure of his self confidence. As a Commissioner and a former soldier in peace and war, I wish I could share that confidence.

APPENDIX 4

WITNESS LIST Pre-Deployment			
Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)
			POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
1	Lieutenant-General Armand Roy	Oct 2/95	Provided background
2	Lieutenant-Colonel James Calvin	Oct 2, 24/95	Provided background
3.	Lieutenant-Colonel Glenn Nordick	Oct 3/95	Director of Senior Appointments III, National Defence Headquarters (NDHQ)
4	Major-General Conrad William Hewson	Oct 3/95	Retired Provided background
5.	Lieutenant-General Kent R. Foster	Oct 5/95	Retired Provided background
6.	Major-General J.M. Robert Gaudreau	Oct 5/95	Retired Provided background
7.	Colonel Walt M. Holmes	Oct 10/95	Commander, Canadian Forces Base (CFB) Petawawa
8.	Master Warrant Officer T. Scott Ferguson	Oct 11/95	Military Police (MP), NDHQ
9.	Corporal J. Christophe Robin Ferguson	Oct 12/95	Serving Non Commissioned Officer (NCO)
10.	Sergeant Eric Gravelle	Oct 12/95	Serving NCO
			1 Cdo, CAR

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
11.	Captain Richard Collin	Oct 12/95	Serving Officer	Lieutenant in 1 Cdo, CAR, Canadian Airborne Regiment Battle Group (CARBG)
12.	Commander Paul H. Jenkins	Oct 12, Nov 2/95	Security Branch, NDHQ	Director of Security 2, NDHQ
13.	Dr. Ken Menkhaus	Oct 23/95	Academic Specialist on Horn of Africa Provided background	
14.	Colonel John S. Bremner	Oct 24/95	Canadian Forces (CF) Advisor, Canadian High Commission at New Delhi	Director of International Policy (DIPOL), NDHQ
15.	M. Daniel Dhavernas	Oct 24/95	Deputy Permanent Representative, Canadian Joint Delegation to the North Atlantic Council	Director, International Security and Defence Relations Division, Department of Foreign Affairs and International Trade (DFAIT)
16.	Commodore David Cogdon	Oct 25-26/95	Serving Officer	Chief of Staff (COS), J3, NDHQ
17.	Colonel Michael O'Brien	Oct 26/95; Jan 29, Feb 27-28/97	Retired	J3 Ops, NDHQ
18.	Captain(N) Kenneth McMillan	Oct 26,30/95	Serving Officer	J3 Plans, NDHQ
19.	Colonel Jan Arp	Oct 30-31/95	Special Assistant to Assistant Deputy Minister (ADM) (Personnel - Per), NDHQ	Director of Personnel Careers, Colonels III, NDHQ

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
20.	Colonel Michael Houghton	Oct 31, Nov 21/95; Feb 12-13/96	Retired	J3 Peacekeeping, NDHQ
21.	Captain Jerome Walsh	Nov 1/95	Serving Officer	Regimental Training Officer, HQ Cdo, CAR, CARBG
22.	Major Ralph Victor Priestman	Nov 14/95	Director of Manpower Personnel Requirements 3-5, NDHQ	Infantry Career Manager, NDHQ
23.	Colonel John Joly	Nov 14-16, 20/95	Retired	G1 (Chief of Personnel, Army) and Director Infantry, Land Forces Command (LFC), HQ, CFB Montréal
24.	Lieutenant-Colonel John Turner	Nov 20, 22/95	Serving Officer	Brigade (Brig) Major (G3), Special Service Force (SSF) HQ, CFB Petawawa
25.	Major Jeffrey Kyle	Nov 23, 28/95; Oct 10, 21- 24/96	Serving Officer	As Captain (Cap), Regimental Operations Officer, CAR, CARBG
26.	Captain Patrick Koch	Nov 28- 29/95	Serving Officer	Liaison Officer between CAR and SSF, CAR, CARBG
27.	Master Warrant Officer Bradley Ross Mills	Nov 29- 30/95	Serving NCO	As Sergeant-Major, 2 Cdo, CAR, CARBG
28.	Chief Warrant Officer Clarence Jardine	Nov 30, Dec 11- 12/95; Sept 19- 20/96	Retired	Regimental Sergeant-Major, CAR, CARBG

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
29.	Chief Warrant Officer Ronald Cooke	Dec 12/95	Serving NCO	Career Manager, NCOs, Princess Patricia's Canadian Light Infantry (PPCLI), NDHQ
30.	Colonel Matthew MacDonald	Dec 12-13/95	Serving Officer	CO, Royal Canadian Dragoons (RCD), CFB Petawawa
31.	Major Michael Kampman	Dec 13-14/95	Serving Officer	Officer Commanding (OC), A Squadron (Sqn), RCD, CARBG
32.	Major James Wilson	Dec 14/95	Acting Director of Security and Military Police Plans and Coordination, NDHQ	Division Provost Marshal, 1st Canadian Division (1st Cdn Div) HQ, CFB Kingston
33.	Lieutenant-Colonel Douglas Southen	Dec 14, 18/95	LFC Provost Marshal	LFC Provost Marshal
34.	Lieutenant-Colonel Donald Young	Dec 18/95	Serving Officer	Aviation Adviser & Deputy Commander of 1st Cdn Div, Aviation Wing, COS Canadian Joint Force Somalia (CJFS)
35.	Major Anthony Seward	Dec 19-20/95; Jan 15/96	Serving Officer	OC, 2 Cdo, CAR, CARBG
36.	Major Rod MacKay	Jan 16-17/95	Serving Officer	DCO, CAR, CARBG
37.	Master Warrant Officer Robert Murphy	Jan 17-18/96	Serving NCO	As WO, 2 Cdo, CAR, CARBG
38.	Corporal Michel Purnell	Jan 18, 25/96	Serving NCO	As Private, 1 Cdo, CAR, CARBG

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
39.	Lieutenant Colonel Paul Morneau	Jan 22-25/96	Serving Officer	CO, CAR, 24 June - 23 Oct/92
40.	Brigadier-General Ernest B. Beno	Jan 29-31/96	Director General Military Personnel, NDHQ	Commander, SSF, 92-93
41.	Major-General Lewis MacKenzie	Jan 31-Feb 1/96	Retired	Commander, Land Forces Central Area (LFCA), CFB Toronto, 92
42.	Lieutenant-General Gordon Reay	Feb 13-15, June 18/96	Retired as Commander, LFC, 93-94	As Major General (MGen), Deputy Commander, LFC, Fall 92
43.	Lieutenant-General James Gervais	Feb 15, 19-20/96	Retired as Commander, LFC	Commander, LFC, Fall 92
44.	Lieutenant-General Paul Addy	Feb 19/96	Military Representative, Canadian Joint Delegation to the North Atlantic Council	As MGen, Deputy Chief of the Defence Staff (DCDS) Intelligence, Security & Operations (ISO), Fall 92
45.	General John de Chastelain	Feb 20-21/96	Retired as Chief of the Defence Staff (CDS)	CDS, Sept 89 - Jan 93 and Jan 94 - Dec 95
46.	Mr. Robert Fowler	Feb 21-22/96	Ambassador and Head of Canada's Permanent Mission to the United Nations	Deputy Minister (DM), Department of National Defence
47.	Major Richard Moreau	Apr 1/96	Serving Officer	As Capt, RCD, Platoon Commander, Security & Defence Platoon, HQ Cdo., CARBG

TRANSCRIPT OF EVIDENTIARY HEARING
In-Theatre

WITNESS LIST
Pre-Deployment

Order of Appear- ance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
48.	Captain Jacques Poitras	Apr 1/96	Serving Officer	Public Affairs Officer, HQ Cdo, CARBG
49.	Sergeant Edwin Dixon	Apr 2/96	Serving NCO	Photographer, CARBG
50.	Mr. Gilles Sandré	Apr 2/96	Director of International Services of the Canadian Red Cross (CRS)	Consultant on humanitarian issues, working for OXFAM, then the CRS
51.	Mr. John Main	Apr 2/96		Volunteer in Somalia with the International Committee of the Red Cross
52.	Warrant Officer Robert Labrie	Apr 2/96	Serving NCO	1 Cdo, CAR, CARBG
53.	Sergeant Ian MacAuley	Apr 3/96	Serving NCO	2 Cdo, CAR, CARBG
54.	Sergeant Mark Godfrey	Apr 3/96	Serving NCO	3 Cdo, CAR, CARBG
55.	Warrant Officer Steven Lehman	Apr 3/96	Serving NCO	A Sqn RCD, CARBG
56.	Sergeant Donald Hobbs	Apr 4/96	Serving NCO	A Sqn RCD, CARBG
57.	Lieutenant-Commander Heather MacKinnon	Apr 4/96	Serving Medical Officer (MO)	MO, HMCS Preserver
58.	Lieutenant(N) Rebecca Patterson	Apr 4/96	Serving Officer	Nurse, CARBG

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
59.	Colonel Jean Leclerc	Apr 15/96	Director of SILT, NDHQ	
60.	Ms. Claudette Lemay	Apr 24/96	Secretary to Director of Public Affairs Operations (DPAO), NDHQ	Secretary to DPAO
61.	Mr. Roberto Gonzalez	Apr 24-25, 29-30, Oct 2/96	Public Servant	Acting Director General Public Affairs (DGPA), NDHQ, Spring 93 to March 94
62.	Ms. Nancy Fournier	May 2, 6-7, 9/96	Clerk, DGPA	Clerk, Media Liaison Office, DGPA, NDHQ
63.	Lieutenant(N) Joel Brayman	May 7-9, 13-15/96	Serving Public Affairs Officer, NDHQ	Public Affairs Officer, NDHQ
64.	Lieutenant(N) Albert Wong	May 15, 27-28/96	(Reserve) Public Affairs Officer	Staff Officer (SO) to DGPA, July 93 to March 94
65.	Lieutenant-Commander Michael Considine	May 28-29/96	Serving Public Affairs Officer	Senior Media Liaison Officer, DGPA, NDHQ
66.	Lieutenant-Colonel Daniel Benjamin	May 29/96	Serving Officer	As Major, Special Assistant, the Somalia Working Group, Sept 93 - NDHQ
67.	Lieutenant-Colonel Réjean Duchesneau	May 30/96	Director of Public Affairs (Army-Québec), NDHQ	Regional Director Public Affairs for DND and the CF for Québec, LFCHQ
68.	Ms. Ruth Cardinal	May 30, Jun 3-4/96	Senior Media Officer, Privy Council Office (PCO)	DGPA, NDHQ, March 94 to Jan 96

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
69.	Lieutenant-Colonel Kim Carter	Jun 4, 17/96	Officer, Judge Advocate General (JAG) branch and member of Somalia Inquiry Liaison Team (SILT), NDHQ	JAG Officer, NDHQ
70.	Lieutenant-General Jim Fox	Jun 5-6/96	On Class "C" Reserve Service as Special Adviser to CDS & DM on Somalia (Head of SILT)	Retired
71.	Major-General Brian Vernon	Jun 17-18/96	Deputy Director of Operation Renaissance in ADM(Per), NDHQ	In Fall 92, Brigadier-General (BGen) Vernon was COS LFC; in Spring 93, MGen Vernon was Comm, LFCA
72.	Dr. Kenneth Calder	Jun 20, 24-25/96	ADM (Policy & Communications - Pol & Comm), NDHQ	ADM (Pol & Comm) since Sept 91
73.	Commander Douglas Caié	Jun 26-27/96	Serving Public Affairs Officer	Public Affairs Officer, DPAO, NDHQ
74.	General Jean Boyle	Aug 2-14, 20-23, 27-28/96	CDS, Dec 95-Oct 96	Commandant, Royal Military College, 91 - May 93; as MGen, Associate ADM (Pol & Comm), from Feb 93-95 and Chairman of the Somalia Working Team, Sept 93 - Dec 95; as Lieutenant-General, ADM (Per), July - Dec 95
75.	Colonel Geoffrey Haswell	Aug 29-30, Sept 13/96	Director Public Affairs Canadian Forces, NDHQ	DPAO, NDHQ
76.	Lieutenant-Colonel Steve Moffatt	Sept 9-11/96	Serving Officer	As Major, Operations Officer (J3), CJFSHQ
77.	Colonel Gary Furrie	Sept 11/96	Serving Logistics Officer	As Lieutenant-Colonel (LCol), Section Head, J4 Logistics, Associate ADM (Material), NDHQ

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
78.	Major Lloyd Gillam	Sept 12, 18/96	Serving Logistics Officer	Senior Logistics Officer, J4, CJFSHQ
79.	Captain John Powell	Sept 13/96	Serving Logistics Officer	Quartermaster, Service (Svc) Cdo, CAR, CARBG
80.	Captain Paul Hope	Sept 16-17/96; Jan 20/97	Serving Intelligence Officer	Intelligence Officer (S2), CAR, HQ Cdo, CARBG
81.	Major Jeremy Mansfield	Sept 17, Oct 9-10/96	Serving Officer	As Capt, OC 1 Airborne Field Squadron (1 AB Fd Sqn), CARBG
82.	Master Warrant Officer Rui Amaral	Sept 18-19/96	Serving NCO	CQ, 2 Cdo, CAR, CARBG
83.	Major Charles Pommel	Sept 24-26/96; Mar 18/97	Serving Officer	OC, 1 Cdo, CAR, CARBG
84.	Master Warrant Officer Ronald O'Connor	Sept 26/96	Serving NCO	As WO, Quarter Master, CAR, HQ Cdo, CARBG
85.	Corporal Tim Richardson-Smith	Sept 26-27/96	Serving NCO	CAR, CJFSHQ, Driver for Col Labb�
86.	Sergeant Kevin Little	Sept 27/96	Serving NCO	As Master Corporal (MCpl), CAR, Direct Fire Support Platoon, CARBG
87.	Sergeant John Flanders	Sept 27/96	Serving NCO	As MCpl, CAR, Direct Fire Support Platoon, CARBG

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
88.	Warrant Officer Shawn Groves	Oct 7-8/96	Serving NCO	As Sergeant (Sgt), Section Commander, 1AB Fd Sqn, CARBG
89.	Warrant Officer Gary Marsh	Oct 8/96	Retired	2IC, 1 Troop, 1AB Fd Sqn, CARBG
90.	Corporal Stephane Dostie	Oct 21/96	Serving NCO	1 Cdo, CAR, Transport Platoon, Svc Cdo, CARBG
91.	Corporal Roger Chabot	Oct 28/96	Serving NCO	1 Cdo, CAR, CARBG
92.	Corporal Michael Mountain	Oct 28/96	Serving NCO	Medic, Svc Cdo, attached to 1 Cdo, CAR, CARBG
93.	Corporal Derick Noonan	Oct 29/96	Serving NCO	Communications, 1 Cdo, CAR, CARBG
94.	Mr. Martin Leclerc	Oct 29/96	Retired	As Cpl, Transport Platoon, Svc Cdo, CAR, CARBG
95.	Corporal Claude Lalancette	Oct 30/96	Serving NCO	1 Cdo, CAR, CARBG
96.	Warrant Officer Tom Aslman	Oct 30-31/96	Serving NCO	Sgt in charge of medical holding Platoon, Svc Cdo, CARBG
97.	Master Corporal Ben Klick	Nov 12-14, 19-20/96	Serving NCO	As Cpl, Recce Platoon, HQ Cdo, CAR, CARBG
98.	Master Corporal Chris King	Nov 18, 20- 21/96	Serving NCO	As Cpl, Recce Platoon, HQ Cdo, CAR, CARBG

WITNESS LIST
Pre-Deployment

Order of Appearance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
99.	Master Corporal Marco Favasoli	Nov 21, 25-27/96	Serving NCO	As Cpl, Recce Platoon, HQ Cdo, CAR, CARBG
100.	Sergeant René Plante	Nov 27-28, Dec 9-10/96	Serving NCO	Recce Platoon, HQ Cdo, CAR, CARBG
101.	Corporal Terry Smetaniuk	Dec 10-12, 16/96	Serving NCO	Recce Platoon, HQ Cdo, CAR, CARBG
102.	Master Corporal Roch Leclerc	Dec 16-18/96	Serving NCO	Recce Platoon, HQ Cdo, CAR, CARBG
103	Master Corporal Brent Countway	Dec 18-19/96; Jan 13-14/97	Serving NCO	Recce Platoon, HQ Cdo, CAR, CARBG
104.	Captain Michel Rainville	Jan 14-16/97	Retired	CO, Recce Platoon, HQ Cdo, CAR, CARBG
105.	Colonel Allan Wells	Jan 22-24/97	Retired	Director General Security and Military Police (DGSAM), NDHQ
106.	Colonel Michael O'Brien	Testified earlier under W/17		
107.	Vice-Admiral Larry Murray	Jan 27-31, Feb 3-4/97	Acting CDS (as VCDS) since Oct 96	As Rear-Admiral, Associate ADM (Pol & Comm), Fall 92; As VAdm, DCDS, Jan 93 - July 94; VCDS, Summer 95
108.	Major Marc Philippe	Feb 4-6/97	Serving JAG Officer	As Capt, Legal Officer (J1), CJFSHQ
109.	Colonel Serge Labbé	Feb 7, 10-14, 18-19/97	International Military Staff, NATO HQ	COS and Acting Commander, 1st Cdn Div, Sept 92; Commander, CJFS, Dec 92 -

WITNESS LIST Pre-Deployment				
Order of Appeari- ance	WITNESS	DATE	POSITION HELD WHEN BEFORE COMMISSION OF INQUIRY (where relevant)	POSITION HELD DURING FALL/WINTER 1992 and/or FALL/WINTER 1993 (where relevant)
110.	Lieutenant-Colonel Carol Mathieu	Feb 19-21, 24-27/97	Serving Officer	CO, CAR, 26 Oct 92 - 15 Sept 93; CO, CARBG, Dec 92 - Sept 93
111.	Major Vincent Buonamici	Mar 10- 12/97	Serving Military Police Officer	Investigation Director, Directory of Police Services, NDHQ, investigating March 4/93 incident
112.	Major Barry Armstrong	Mar 12- 14/97	Chief Surgeon, National Defence Medical Centre	Unit Surgeon, Svc Cdo, CARBG
113.	Sergeant John Collins	Mar 17/97	Retired	CAR, Sgt in charge of Ops, Svc Cdo, CARBG
114.	Brigadier-General Gabriel Zuliani	Mar 17/97	Retired	COS (Admin), Force Mobile Command (FMC), CFB Montréal
115.	Master Warrant Officer Blaine Bryan	Mar 18/97	Serving NCO	As Sgt, CQ, Svc Cdo, CAR
116.	Major Colin Magee	Mar 19/97	Serving Officer	OC, 3 Cdo, CAR, CARBG

APPENDIX 5

List of Commissioned Research Studies

Douglas L. Bland, *National Defence Headquarters: Centre for Decision*

Jean-Paul Brodeur, *Violence and Racial Prejudice in the Context of Peacekeeping*

Martin L. Friedland, *Controlling Misconduct in the Military*

Paul LaRose-Edwards, Jack Dangerfield and Randy Weekes,
Non-Traditional Military Training for Canadian Peacekeepers

James W. O'Reilly and Patrick Healy, *Independence in the Prosecution of Offences in the Canadian Forces: Military Policing and Prosecutorial Discretion*

Berel Rodal, *The Somalia Experience in Strategic Perspective: Implications for the Military in a Free and Democratic Society*

Arthur Schafer, *The Buck Stops Here: Reflections on Moral Responsibility, Democratic Accountability and Military Values*

Allen G. Sens, *Somalia and the Changing Nature of Peacekeeping: The Implications for Canada*

James M. Simpson, *Law Applicable to Canadian Forces in Somalia 1992/93*

Donna Winslow, *The Canadian Airborne Regiment in Somalia: A Socio-cultural Inquiry*

APPENDIX 6

Background Briefings and Seminars

Briefings Given at the Commission of Inquiry's Premises		
PRESENTER	DATE	SUBJECT
Dr. Sandy Cotton School of Business Queen's University	February 16, 1997	Sociology of the CF Corps
Major General Marc Terreau Former Chief of Review Services	December 15, 1996	Operation of the Office of the Chief of Review Services
Dr. Desmond Morton Director McGill Institute for the Study of Canada	August 2, 1995	Lessons of Military History
Professor Arthur Schafer Director Center for Professional and Applied Ethics	February 17, 1996	Accountability
Professor David Bercuson University of Calgary	November 27, 1995	Canadian Military & the Somalia Operation
Mr. Erwin Schmidle Visiting Research Fellow U.S. Institute of Peace Washington, D. C.	May 22, 1996	New Approaches in Preparing for Peacekeeping Operations
Mr. Jarat Chopra Research Associate Thomas J. Watson Jr. Institute for International Studies	October 19, 1995	The Changing Nature of Peacekeeping
Mr. Paul Marsden Military Archivist Government Archives Division	December 3, 1996	National Archives Holdings of DND Material
Mr. Berel Rodal	May 30, 1995	Military in a Free and Democratic Society

Capt Bill Reed, DJAG MGen Jean Boyle, DND/SILT BGen Pierre Boutet, DND/SILT Colonel Jean Leclerc, DND/SILT Mr. Peter Vita, DOJ LCol Kim Carter, JAG/SILT Mr. Alain Prefontaine, DOJ	April 18, 1995	Terms of Reference, Operation of CF
MGen Jean Boyle, LCol Kim Carter, BGen Pierre Boutet, Mr. Peter Vita, Mr. Alain Préfontaine	June 15, 1995	Terms of Reference
LCol Kim Carter, Capt Colin Carson	June 15, 1995	Interpretation of Military Documentation
<u>Institute on Governance</u> (Mr. Tim Plumptre) <i>Participants:</i> Dr. James Mallory Dr. Paul Thomas Mr. Martin Friedland Mr. Arthur Kroeger Dr. Douglas Bland LGen Jack Vance	January 19, 1997	Accountability
Col Jim Bender Director Information Systems Operations and Training	March 25, 1996	Communications
Dr. Douglas Bland Senior Associate Centre for International Relations Queen's University	May 31, 1995	Operation & Organization of NDHQ
LCol Denis Rivard, Mr. Karol Wenek, LCol Bob Moffat, LCdr Wilson, Maj Arsenault, Capt R. Bergeron, Capt B. Massé	June 19, 1996	CF Recruiting, CF Performance Evaluations and Promotions, Selection & Screening
Mr. Brian Grainger Grainger & Associates	August 2, 1995	Military Ethics
Col Pat Crandell	January 24, 1997	Combat Intelligence
Petty Officer Couture, 1st class SILT	June 21, 1995	Canadian Forces Filing System

Briefings Given In Canada to Commissioners or Inquiry Staff		
<i>Ottawa</i>		
LCol D. Moore J3 Ops (International)	January 9 and 24, 1996	Background Information on Peacekeeping Operations and Training
LCol S. Carr (J3 Training & NBC)		
Col R.G. Elrick (DGRET) Maj R.P. Honig	January 8, 1996	Individual Training System
Cdr E.G. Barnett	February 9, 1996	Officer Professional Development Program
<i>Canadian Forces Base Borden</i>		
MGen R. Desloges Commander of the CF Recruiting Education and Training System	January 11, 1996	Individual Training
<i>Kingston</i>		
Cdr F.P. Wilson Head Military Psychology and Leadership Department Royal Military College	January 19, 1996	Leadership and Ethics Studies at RMC
Briefings Given Outside Canada to Commissioners or Inquiry Staff		
<i>Australia</i>		
LGen J. Sanderson Chief of the General Staff	December 23, 1996	Australian Military Organization Military Ethos and Values
MGen F.J. Hickling Land Commander, Australia	January 8, 1997	Organization and Command of Peacekeeping Missions Selection and Screening of Personnel Deployed Overseas
MGen J.P. Stevens Assistant Chief of the General Staff	January 7, 1997	Personnel Policies Mechanisms to Monitor and Screen Racism

Col John Harvey Director, Army Legal Services	January 7, 1997	Australian Military Justice System Training in the Law of War Rules of Engagement
Mr. Martyn Taylor Office of the Inspector General Ms. Paula Skippon Special Projects Officer to the Inspector General	January 7, 1997	Operation of the Office of Inspector General Duties and Responsibilities of the Inspector General
LCol John Heggart Director Military Police	January 7, 1997	Functions and Responsibilities of the Military Police
<i>England</i>		
MGen A.P.V. (Tony) Rogers Director of Army Legal Services (DAL'S)	March 12, 1996	Organization of the Directorate of Army Legal Services Functions and Responsibilities of DAL'S
Col P.S. (Patricia) Purves Directorate of Manning (Army)	March 14, 1996	Personnel Policies Behavioural Screening Army Policy on Racism
His Honour Judge J.W. (James) Rant Judge Advocate General (Army)	March 14, 1996	Military Justice System Organization of the JAG Office JAG Functions and Responsibilities
MGen M.D. (Mike) Regan Chief of Staff, Adjutant General HQ	March 15, 1996	Selection and Screening of Officers Training in the Law of War Measurement of Operational Readiness
Brigadier I.W. Fulton Provost Marshal (Army)	March 12, 1996	Functions and Responsibilities of the Provost Marshal Organization of the Military Police

<i>United States</i>		
Col David Graham Chief of International Law and Operational Law Division Col John Smith Government Appellate Division Col Charlie Trant, Chief Criminal Law Division Mr. Hays Park, Special Assistant Law of War	August 28, 1995	Military Law Prosecutions Under the U.S. Military Justice System Law of War Training Rules of Engagement
MGen M. Nardotti Judge Advocate General of the U.S. Army BGen Frank Altenburg Colonel David Graham	August 31, 1995	Law of War Training Operation of Military Justice System
LGen J.L. Bates Inspector General of the U.S. Army Col Robert J. Melchior, Chief Operations Division at the Inspector General's office	August 30, 1995	Organization and Operation of the Office of the U.S. Army Inspector General
<i>France</i>		
Col Norois Bureau Défense Opération Direction Générale de la Gendarmerie	July 10, 1996	French Military Organization and Structure
Col Arnoult État-Major des Armées DAG	July 10, 1996	French Military Organization and Structure
M. Le Magistrat Général Monnet Chef de la Division des Affaires Pénales Militaires	July 11, 1996	French Military Justice System

APPENDIX 7

Abbreviations and Acronyms

The following lists define the acronyms and abbreviations used most often in this report. As a rule, we have included only those used throughout the report. Abbreviations and acronyms used in just one or two chapters are defined on first use in those chapters.

MILITARY RANKS

Army and Air Force Ranks

General (Gen)
 Lieutenant-General (LGen)
 Major-General (MGen)
 Brigadier-General (BGen)
 Colonel (Col)
 Lieutenant-Colonel (LCol)
 Major (Maj)
 Captain (Capt)
 Lieutenant (Lt)
 Chief Warrant Officer (CWO)
 Master Warrant Officer (MWO)
 Sergeant (Sgt)
 Master Corporal (MCpl)
 Corporal (Cpl)
 Private (Pte)

Naval Ranks

Admiral (Adm)
 Vice-Admiral (VAdm)
 Rear-Admiral (RAdm)
 Commodore (Cdre)
 Captain (Capt (N))
 Commander (Cdr)
 Lieutenant-Commander (LCdr)
 Lieutenant (Lt (N))

ABBREVIATIONS AND ACRONYMS USED THROUGHOUT THE REPORT

ADM	Assistant Deputy Minister
ADM (Per)	Assistant Deputy Minister (Personnel)
ADM (Pol & Comm)	Assistant Deputy Minister (Policy and Communications)
AIRCOM	Air Command
ATI	access to information
ATI Act	<i>Access to Information Act</i>
BOI	Board of Inquiry

BOI	Board of Inquiry
CAR	Canadian Airborne Regiment
CARBG	Canadian Airborne Regiment Battle Group
CDS	Chief of the Defence Staff
Cdo	Commando
CENTCOM	(United States) Central Command
CF	Canadian Forces
CFAO	Canadian Forces Administrative Order
CFB	Canadian Forces Base
CFCSC	Canadian Forces Command and Staff College
CFOO	Canadian Forces Organization Order
CIDA	Canadian International Development Agency
CIMIC	Civil/Military Co-operation
CJFS	Canadian Joint Force Somalia
CJFS HQ	Canadian Joint Force Somalia Headquarters
C.M.A.C.	Court Martial Appeal Court
CO	commanding officer
COS	chief of staff
CSM	company sergeant-major
DCDS	Deputy Chief of the Defence Staff
DCDS ISO	Deputy Chief of the Defence Staff, Intelligence, Security and Operations
DCO	deputy commanding officer
DEM	daily executive meeting
DFAIT	Department of Foreign Affairs and International Trade (formerly DEA, Department of External Affairs)
DGPA	Directorate/Director General Public Affairs
DG Secur	Director General Security
DM	Deputy Minister
DND	Department of National Defence
D Secur Ops	Director Security Operations
DI Pol	Director International Policy, National Defence Headquarters
FMC	Force Mobile Command (became LFC, Land Force Command, on November 15, 1992)
G1, G2, etc.	general staff (see J1, J2, etc.)
GPCT	general purpose combat training
HMCS	Her Majesty's Canadian Ship

HQ	headquarters
HRS	Humanitarian Relief Sector
ICRC	International Committee of the Red Cross
J1	personnel staff in a joint headquarters
J2	intelligence staff in a joint headquarters
J3	operations staff in a joint headquarters
J4	logistics staff in a joint headquarters
J5	civilian/military co-operation staff in a joint headquarters
J6	communications/information systems staff in a joint headquarters
JAG	Judge Advocate General
LFC	Land Force Command
LFCA	Land Force Central Area
LFC HQ	Land Force Command Headquarters
LFCA HQ	Land Force Central Area Headquarters
MARCOM	Maritime Command
MARLANT	Maritime Forces Atlantic
MARPAC	Maritime Forces Pacific
MND	Minister of National Defence
MP	Military Police
NATO	North Atlantic Treaty Organization
NCM	non-commissioned member
NCO	non-commissioned officer
NDA	<i>National Defence Act</i>
NDHQ	National Defence Headquarters
NDOC	National Defence Operations Centre
NGO	non-governmental organization
NODLR	night observation device long range
NSE	national support element
NVG	night-vision goggles
OC	officer commanding
OIC	order in council
Op O	operation order
P5	permanent members of the United Nations Security Council
PCO	Privy Council Office
POL	petroleum, oils and lubricants

PPCLI	Princess Patricia's Canadian Light Infantry
QR&O	<i>Queen's Regulations and Orders</i>
R22 ^e R	Royal 22 ^e Régiment (the 'Vandoos')
RCD	Royal Canadian Dragoons
RCR	The Royal Canadian Regiment
Recce	reconnaissance
REGT/Regt	regiment
ROE	rules of engagement
RSM	regimental sergeant-major
SILT	Somalia Inquiry Liaison Team
SITREP	situation report
SOP	standing operating procedures
SSF	Special Service Force
SWG	Somalia Working Group
TFMT	task force movement table
TO&E	table of organization and equipment
UNHCR	United Nations High Commissioner for Refugees
UNOSOM	United Nations Operation in Somalia
UNITAF	Unified Task Force
VCDS	Vice-Chief of the Defence Staff
WHO	World Health Organization
WFP	World Food Program
Wng O	Warning order

APPENDIX 8

Commission of Inquiry Staff and Consultants

Chairman

Justice Gilles Létourneau

Commissioners

Peter Desbarats

Justice Robert Rutherford

Commission Secretary

Stanley A. Cohen

David Pomerant, Director
 Claude Bouchard
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**Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia**



CANADA

**Commission d'enquête
sur le déploiement des
Forces canadiennes en Somalie**

